

NOTICE

\$6,050,000*

CITY OF ARTESIA, NEW MEXICO

Water and Wastewater System Refunding Revenue Bonds, Series 2019

Preliminary Official Statement, subject to completion,
dated March 27, 2019

The Preliminary Official Statement, dated March 27, 2019 (the “Preliminary Official Statement”), relating to the above-described bonds (the “Series 2019 Bonds” or the “Bonds”) of the City of Artesia, New Mexico (the “City”), has been posted as a matter of convenience. The posted version of the Preliminary Official Statement has been formatted in Adobe Portable Document Format. Although this format should replicate the Preliminary Official Statement available from the City, appearance may vary for a number of reasons, including electronic communication difficulties or particular user software or hardware. Using software other than Adobe Acrobat may cause the Preliminary Official Statement that you view or print to differ in appearance from the Preliminary Official Statement.

The Preliminary Official Statement and the information contained therein are subject to completion or amendment or other change without notice. Under no circumstances shall the Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

For purposes of Rule 15c2-12 promulgated by the United States Securities and Exchange Commission, the Preliminary Official Statement alone, and no other document or information on the internet, constitutes the “Official Statement” that the City has “deemed final” as of its date in respect of the Bonds, except for certain information permitted by Rule 15c2-12 to be omitted therefrom.

No person has been authorized to give any information or to make any representations other than those contained in the Preliminary Official Statement in connection with the offer and sale of the Bonds and, if given or made, such information or representations must not be relied upon as having been authorized. The information and expressions of opinion in the Preliminary Official Statement are subject to change without notice and neither the delivery of the Official Statement nor any sale made thereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City since the date of the Preliminary Official Statement.

By choosing to proceed and view the electronic version of the Preliminary Official Statement, you acknowledge that you have read and understood this Notice.

Preliminary Official Statement dated March 27, 2019

*Preliminary; subject to change

PRELIMINARY OFFICIAL STATEMENT DATED MARCH 27, 2019

NEW ISSUE-Book-Entry Only

INSURED RATING: S&P – “AA”
UNDERLYING RATING: S&P – “A+” (Negative Outlook)
See “RATINGS” herein.

In the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, under existing laws, regulations, rulings and judicial decisions, and assuming compliance with certain covenants described in “TAX MATTERS” herein, interest on the Bonds (including original issue discount treated as interest) (a) is excludable from the gross income of the recipients thereof for federal income tax purposes, under Section 103 of the Internal Revenue Code of 1986, as amended, (b) is not an item of tax preference under Section 57 of the Internal Revenue Code of 1986, as amended, for purposes of the federal alternative minimum tax imposed on individuals, and (c) is excludable from net income for purposes of all taxation imposed by the State of New Mexico or any political subdivision thereof. For a more complete description of such opinion of Bond Counsel and a description of certain provisions of the Internal Revenue Code of 1986, as amended, which may affect the federal tax treatment of interest on the Bonds for certain owners of such bonds, see “TAX MATTERS” herein.

\$6,050,000*
CITY OF ARTESIA, NEW MEXICO
Water and Wastewater System Refunding Revenue Bonds
Series 2019

Dated: Date of Delivery

Due: June 1, as shown on the inside cover

The Bonds are special limited obligations of the City of Artesia, New Mexico (the “City”), issuable only as fully registered bonds as to both principal and interest in the denomination of \$5,000 and integral multiples thereof. Interest accrues from the date of delivery of the Bonds and is payable semiannually on June 1 and December 1 in each year beginning June 1, 2019. The Bonds will be issued pursuant to a book-entry only system and will be registered in the name of Cede & Co., as nominee of The Depository Trust Company New York, New York (“DTC”). Purchasers of the Bonds (“Beneficial Owners”) will not receive physical delivery of bond certificates representing their beneficial ownership interests. So long as DTC or its nominee is the owner of the Bonds, disbursement of payments of principal and interest to DTC is the responsibility of the Paying Agent (as defined herein), disbursement of such payments to DTC Participants (as defined herein) is the responsibility of DTC and disbursement of such payments to Beneficial Owners is the responsibility of DTC Participants, as more fully described herein.

SEE MATURITY SCHEDULE SET FORTH ON THE INSIDE COVER OF THIS OFFICIAL STATEMENT.

The Bonds maturing on and after June 1, 2027* are subject to optional redemption on and after June 1, 2026*, in whole or in part at any time.* See “THE BONDS - Prior Redemption” herein.

The Bonds are being issued to provide funds to defray the costs of (1) paying, refunding and discharging the City’s outstanding Water and Wastewater Refunding Revenue Bonds, Series 2010 maturing on and after June 1, 2020, (2) funding a reserve fund for the Bonds, and (3) paying all expenses incidental to the issuance of the Bonds. The Bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, are not general obligations of the City and are payable and collectible solely from the Net Revenues of the Water and Wastewater System and the Pledged Tax Revenues specifically pledged therefor. See “SECURITY AND SOURCES OF PAYMENT” herein. Neither the full faith and credit of the City, nor the ad valorem taxing power or general resources of the City, the State of New Mexico or any other political subdivision is pledged to the payment of the Bonds. The Bonds constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues (as defined herein).

The scheduled payment of principal of and interest on the Bonds when due will be guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the Bonds by **BUILD AMERICA MUTUAL ASSURANCE COMPANY.**



The Bonds are offered when, as and if issued by the City subject to the delivery of an approving opinion by Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, and other conditions. Modrall, Sperling, Roehl, Harris & Sisk, P.A. has also acted as special counsel to the City in connection with the preparation of this Official Statement and the sale of the Bonds to the Underwriters. Certain legal matters will be passed upon for the Underwriters by McCall, Parkhurst & Horton L.L.P., Dallas, Texas. It is expected that delivery of the Bonds will be made on or about April 16, 2019, through the facilities of DTC, against payment therefor.

This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision.

**BAIRD
STIFEL**

Dated: _____, 2019

*Preliminary; subject to change

THIS PRELIMINARY OFFICIAL STATEMENT AND THE INFORMATION CONTAINED HEREIN ARE SUBJECT TO COMPLETION AND AMENDMENT. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of such jurisdiction.

\$6,050,000*
CITY OF ARTESIA, NEW MEXICO
Water and Wastewater System Refunding Revenue Bonds
Series 2019

MATURITY SCHEDULE*
Base CUSIP⁽¹⁾ 04310

| <u>Maturity (June 1)</u> | <u>Principal Amount</u> | <u>Interest Rate</u> | <u>Initial Yield</u> | <u>CUSIP⁽¹⁾</u> |
|------------------------------|-----------------------------|--------------------------|--------------------------|----------------------------|
| 2020 | \$475,000 | | | |
| 2021 | 505,000 | | | |
| 2022 | 525,000 | | | |
| 2023 | 555,000 | | | |
| 2024 | 585,000 | | | |
| 2025 | 610,000 | | | |
| 2026 | 645,000 | | | |
| 2027 | 685,000 | | | |
| 2028 | 715,000 | | | |
| 2029 | 750,000 | | | |

⁽¹⁾CUSIP® is a registered trademark of the American Bankers Association. CUSIP Global Services (CGS) is managed on behalf of the American Bankers Association by S&P Global Market Intelligence. Copyright© 2018 CUSIP Global Services. All rights reserved. CUSIP® data herein is provided by CUSIP Global Services. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP® numbers are provided for convenience of reference only. None of the City, the Financial Advisor, the Underwriters or their agents or counsel assumes responsibility for the accuracy of such numbers.

CITY OF ARTESIA

511 West Texas Avenue
Artesia, New Mexico 88210

MAYOR

Raye Miller

CITY COUNCIL

Luis Florez (Mayor Pro Tem)
Manuel Madrid, Jr.
Raul Rodriguez
George G. Mullen
Kent Bratcher
Jeff Youtsey
Terry Hill
Bill Rogers

CITY ADMINISTRATION

Aubrey Hobson, City Clerk/Treasurer
Summer Galvan, Finance Supervisor
Matthew T. Byers, City Attorney

FINANCIAL ADVISOR

RBC Capital Markets, LLC
Albuquerque, New Mexico

BOND AND DISCLOSURE COUNSEL

Modrall, Sperling, Roehl, Harris & Sisk, P.A.
Albuquerque, New Mexico

REGISTRAR AND PAYING AGENT

City of Artesia Clerk/Treasurer

UNDERWRITERS

Robert W. Baird & Co., Incorporated
Stifel, Nicolaus & Company, Incorporated

VERIFICATION AGENT

Causey, Demgen & Moore, P.C.
Denver, Colorado

REFUNDING ESCROW AGENT

BOKF, NA
Albuquerque, New Mexico

USE OF INFORMATION IN THIS OFFICIAL STATEMENT

No dealer, salesman or other person has been authorized by the City of Artesia, New Mexico (the "City") to give any information or to make any statements or representations, other than those contained in this Official Statement, and, if given or made, such other information, statements or representations must not be relied upon as having been authorized. This Official Statement does not constitute an offer to sell or solicitation of an offer to buy any of the Bonds in any jurisdiction in which such offer or solicitation is not authorized, or in which any person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. The information set forth or included in this Official Statement has been provided by the City and from other sources believed by the City to be reliable. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder shall create any implication that there has been no change in the financial condition or operations of the City described herein since the date hereof. This Official Statement contains, in part, estimates and matters of opinion that are not intended as statements of fact, and no representation or warranty is made as to the correctness of such estimates and opinions or that they will be realized.

THE BONDS ARE EXEMPT FROM REGISTRATION WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION AND CONSEQUENTLY HAVE NOT BEEN REGISTERED THEREWITH. THE REGISTRATION, QUALIFICATION, OR EXEMPTION OF THE BONDS IN ACCORDANCE WITH APPLICABLE SECURITIES LAW PROVISIONS OF THE JURISDICTIONS IN WHICH THE BONDS HAVE BEEN REGISTERED, QUALIFIED, OR EXEMPTED SHOULD NOT BE REGARDED AS A RECOMMENDATION THEREOF. None of the United States Securities and Exchange Commission or any other federal, state, municipal or other governmental entity, or any agency or department thereof, has passed upon the merits of the Bonds or the accuracy or completeness of this Official Statement. Any representation to the contrary may be a criminal offense.

This Official Statement is "deemed final" by the City for purposes of Rule 15c2-12 promulgated by the United States Securities and Exchange Commission. The City has covenanted to provide such annual financial statements and other information in the manner as may be required by regulations of the Securities and Exchange Commission or other regulatory body.

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

This Official Statement contains statements that are "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995. When used in this Official Statement, the words "estimate," "project," "intend," "expect" and similar expressions are intended to identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof.

Build America Mutual Assurance Company ("BAM") makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, BAM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding BAM, supplied by BAM and presented under the heading "BOND INSURANCE" and Appendix D – SPECIMEN MUNICIPAL BOND INSURANCE POLICY.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE CITY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Copies of the Bond Ordinance authorizing the issuance of the Bonds are available upon request at the office of the City Clerk/Treasurer, City Hall, 511 West Texas Avenue, Artesia, New Mexico 88210.

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OFFICIAL STATEMENT

\$6,050,000*

City of Artesia, New Mexico

Water and Wastewater System Refunding Revenue Bonds

Series 2019

INTRODUCTION

This Official Statement, which includes the cover page and appendices hereto, provides certain information in connection with the City of Artesia, New Mexico (the “City”) Water and Wastewater System Refunding Revenue Bonds, Series 2019 (the “Bonds”) being issued by the City pursuant to the Bond Ordinance (as defined below).

This introduction is not a summary of this Official Statement. It is only a description of and guide to, and is qualified by, the more complete information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The offering of the Bonds to potential investors is made only by means of the entire Official Statement. No person is authorized to detach this “INTRODUCTION” from this Official Statement, or to otherwise use it without the entire Official Statement. This Official Statement has been prepared by the City in connection with the original issuance and sale of the Bonds, and detachment or other use of this “INTRODUCTION” without the entire Official Statement, including the cover page and appendices, is unauthorized.

All terms used in this Official Statement which are not defined herein shall have the meanings given such terms in the ordinance authorizing the issuance of the Bonds adopted by the City on March 12, 2019 (the “Bond Ordinance”).

The Issuer

The City is a political subdivision of the State of New Mexico (the “State”) organized and existing under and pursuant to the Constitution and laws of the State. The City was incorporated in 1905, operates under a Mayor-Council form of government, and is located in the southeastern portion of the State, approximately 241 miles southeast of Albuquerque. As of February 2019, the estimated population of the City was approximately 12,411. See “THE CITY” and “AREA ECONOMIC INFORMATION.”

Purpose and Authorization

The Bonds are being issued to provide funds to defray the costs of (1) paying, refunding and discharging the City’s outstanding Water and Wastewater System Revenue Bonds, Series 2010 (the “Series 2010 Bonds”) maturing on and after June 1, 2020, (2) funding a reserve fund for the Bonds, and (3) paying all expenses incidental to the issuance of the Bonds.

*Preliminary; subject to change

Authority for Issuance

The Bonds are being issued pursuant to the City's powers under the laws and the Constitution of the State, including Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and the Bond Ordinance. The Bonds are expected to be ready for delivery on or about April 16, 2019, subject to the approving opinion of Bond Counsel.

Terms of the Bonds

Principal and Interest Payment Dates

The Bonds will be dated the date of delivery. Interest on the Bonds will be payable on June 1 and December 1 of each year to registered owners shown on the books of the Registrar on the 15th day of the calendar month preceding each regularly scheduled interest payment date, commencing June 1, 2019. The Bonds will be issued in the aggregate principal amount of \$6,050,000* and will mature on June 1 of each year in the amounts shown on the inside of the cover page (unless redeemed prior to maturity).

Denominations

The Bonds will be issuable in denominations of \$5,000, or integral multiples thereof.

Reserve Fund Requirement

The Reserve Fund Requirement for the Bonds is \$_____. The Reserve Fund Requirement will be funded on the day of issuance from proceeds of the Bonds or with a reserve fund insurance policy, as more fully described in "THE BONDS - Creation and Administration of Funds."

*Optional Redemption**

Bonds maturing on and after June 1, 2027 are subject to optional redemption beginning June 1, 2026, as more fully described in "THE BONDS - Prior Redemption."

Additional Parity Bonds

Except with respect to certain refunding bonds, the City will be required to meet certain tests prior to the issuance of additional bonds with a lien on the Pledged Revenues on a parity with the lien of the Bonds. For a description of these tests, see "THE BONDS - Additional Bonds."

Security and Sources of Payment

The Bonds are not general obligations of the City and no pledge of the full faith and credit of the City, the taxing power or general resources of the City is made for the payment thereof. The Bonds are special limited obligations of the City and are not an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation. The Bonds are payable and collectible solely from the Pledged Revenues, as defined in the Bond Ordinance. Pledged Revenues consist of the Net Revenues and the Pledged Tax Revenues. For a more complete description of the pledge for payment of the Bonds, see

* Preliminary; subject to change

“SECURITY AND SOURCES OF PAYMENT” and “THE BONDS – Creation and administration of Funds – The Reserve Fund.”

Net Revenues of the System

Net Revenues consist of the Gross Revenues of the System less Operation and Maintenance Expenses, as such terms are defined in the Bond Ordinance. See “SECURITY AND SOURCES OF PAYMENT.”

Pledged Tax Revenues

Pledged Tax Revenues consist of (a) the first \$1,000,000 received during each Fiscal Year from the City’s sixth increment of municipal local option gross receipts tax and distributed to the City from the Revenue Division of the New Mexico Taxation and Revenue Department, which tax is imposed pursuant to Section 7-19D-1 through Section 7-19D-9 and Ordinance No. 772, adopted on September 11, 2007, at a rate of 0.25% on any person engaging in business in the City for the privilege of engaging in business in the City (the “Pledged Tax Revenues”), and (b) any other gross receipts tax revenues received by the City, whether from distribution by the State or pursuant to gross receipts taxes imposed by the City, and hereafter pledged to the payment of Parity Bonds by affirmative act of the Council.

Outstanding Obligations Payable from Pledged Revenues

On the date of the issuance of the Bonds, the City will defease the Series 2010 Bonds with proceeds of the Bonds and other available funds. Following the defeasance of the Series 2010 Bonds, the City will have no outstanding obligations with a parity lien on Pledged Revenues. Pursuant to the Bond Ordinance, the City is not permitted to incur obligations payable from Pledged Revenues which are senior to the Bonds. However, the City will be permitted to incur parity obligations in accordance with, and upon satisfaction of, certain tests as described in “THE BONDS - Additional Bonds” and to incur obligations payable from Pledged Revenues which are junior to the Bonds.

Tax Exemption

In the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, assuming continuous compliance with certain covenants described in “TAX MATTERS” herein, interest on the bonds (a) is excludable from gross income for federal income purposes, (b) is not a specific preference item for purposes of the federal alternative minimum tax on individuals and (c) is excludable from net income for purposes of all taxation imposed by the State of New Mexico or any political subdivision thereof. See “TAX MATTERS” herein.

Professionals Involved in the Offering

At the time of the issuance and sale of the Bonds, Modrall, Sperling, Roehl, Harris & Sisk, P.A., as Bond Counsel, will deliver a bond opinion in substantially the form included in Appendix A hereto. See “LEGAL MATTERS.” Modrall, Sperling, Roehl, Harris & Sisk, P.A. has also acted as special counsel to the City in connection with the preparation of this Official Statement and the sale of the Bonds to the Underwriters. The Bonds will be sold and distributed in the initial offering by Robert W. Baird & Co., Incorporated and Stifel, Nicolaus & Company, Incorporated (the “Underwriters”). Certain legal matters will be passed on for the Underwriters by McCall, Parkhurst & Horton L.L.P., Dallas, Texas. Griego Professional Services, LLC, certified public accountants, audited the City’s financial statements

for the fiscal year ended June 30, 2018. The City's auditors have not been requested to review this official statement and have not done so.

RBC Capital Markets, LLC is employed as Financial Advisor to the City in connection with the issuance of the Bonds. The Financial Advisor's fee for services rendered with respect to the sale of the Bonds is contingent upon the issuance and delivery of the Bonds. The Financial Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness, or fairness of the information in this Official Statement. The Financial Advisor may receive a fee for conducting a competitive bidding process regarding the investment of certain proceeds of the Bonds.

Causey, Demgen & Moore, P.C. (the "Verification Agent") will verify at the time of delivery of the Bonds to the Underwriters, the mathematical accuracy of the schedules and demonstrate the Defeasance Obligations will mature and bear interest in such amounts which, together with uninvested funds, if any, in the Escrow Fund, will be sufficient to pay when due, the principal of and interest on the Series 2010 Bonds on and to their redemption date. Such maturing principal of and interest on the Defeasance Obligations will not be available to pay the Bonds. See "VERIFICATION OF CERTAIN MATHEMATICAL COMPUTATIONS" herein.

Offering and Delivery of the Bonds

The Bonds are offered when, as and if issued, subject to approval of Bond Counsel and certain other conditions. It is anticipated that the Bonds will be delivered through the facilities of The Depository Trust Company, New York, New York, on or about April 16, 2019.

Other Information

This Official Statement speaks only as of its date, and the information contained herein is subject to change. The quotations from, and summaries and explanations of the statutes, regulations and documents contained herein do not purport to be complete, and reference is made to such laws, regulations and documents for full and complete statements of their provisions. Copies, in reasonable quantity, of such laws, regulations and documents may be obtained during the offering period, upon request to the City and upon payment to the City of a charge for copying, mailing and handling, at 511 West Texas Avenue, Artesia, New Mexico 88210, Attention: City Clerk/Treasurer. Additional information also may be obtained from the City's Financial Advisor during the offering period for the Bonds at RBC Capital Markets, LLC, 6301 Uptown Boulevard, N.E., Suite 110, Albuquerque, New Mexico 87110.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the City and the purchasers or holders of any of the Bonds.

SPECIAL FACTORS

The purchase of the Bonds involves special risks and the Bonds may not be appropriate investments for all types of investors. Each prospective investor is encouraged to read this Official Statement in its entirety and to give particular attention to the factors described below, which, among other factors discussed herein, could affect the payment of debt service on the Bonds and could affect the market price of the Bonds to an extent that cannot be determined at this time. *The following does not purport to be an exhaustive listing of risks and other considerations which may be relevant to investing in*

the Bonds. In addition, the order in which the following information is presented is not intended to reflect the relative importance of such risks.

Limited Obligations

The Bonds are limited obligations of the City payable as to principal and interest solely from Pledged Revenues, which consist of the Net Revenues and the Pledged Tax Revenues. Therefore, the security for the punctual payment of the principal of and interest on the Bonds is dependent on the City's receipt of the Pledged Revenues in an amount sufficient to meet the debt service requirements of the Bonds and the other Parity Bonds. The Bonds and the interest thereon do not constitute a debt or indebtedness of the City within the meaning of any provision or limitation of the Constitution or laws of the State and do not give rise to a pecuniary liability of the City or a charge against its general credit or ad valorem taxing power. Further, the Bonds are not obligations of the State, and the owners of the Bonds may not look to the State for payment of the principal of or interest on the Bonds.

Ability To Meet Rate Covenant

The Bond Ordinance provides that the City will fix, charge and collect such rates and charges with respect to the System as are required in order that in each Fiscal Year the Pledged Revenues are at least equal to 120% of the debt service requirements on outstanding Parity Bonds in such Fiscal Year.

If Pledged Revenues fall below the level necessary to meet the rate covenant described above, an event of default under the Bond Ordinance will not occur so long as the City, within 180 days after the end of any such Fiscal Year, adopts a schedule of rates and charges with respect to the System recommended or approved by a Consulting Engineer which would bring the City into compliance with the rate covenant. In the alternative of establishing fees, rates and charges necessary to meet the Rate Covenant set forth above, the City may implement reductions in the operation and maintenance expenses for the System in an amount sufficient to meet the Rate Covenant. If the City complies with the above described requirements, it will not constitute an event of default under the Bond Ordinance. Increasing the schedule of rates, fees and charges for the use of and for the services furnished or to be furnished by the System would be subject to contractual, statutory and regulatory restrictions.

Pledged Tax Revenues Are Subject to Fluctuation

Gross receipts tax collections are subject to the fluctuations in spending related, in part, to national and local economic conditions, which influence the amount of gross receipts taxes collected. This causes gross receipts tax revenues to increase along with the increasing prices brought about by inflation, but also causes collections to be vulnerable to adverse economic conditions and reduced spending. The City's retail sales are affected by general economic circumstances.

The Pledged Tax Revenues are based on the total gross receipts of the City. The City's economic base and future collections in gross receipts tax revenues are directly affected, in part, by oil and natural gas exploration and development activities, and ongoing use and development of the Federal Law Enforcement Training Center in the City. Additionally, various circumstances and developments, most of which are beyond the control of the City, may have an adverse effect on the future level of Pledged Tax Revenues. Such circumstances may include, among others, adverse changes in national and local economic and financial conditions generally, reductions in the rates of employment and economic growth in the City, the State and the region, a decrease in rates of population growth and rates of residential and commercial development in the City, the State and the region and various other factors.

Legislative Changes

The State Legislature of the State of New Mexico (the “Legislature”) may amend the laws relating to the imposition, calculation and/or the distribution of or otherwise impacting the City’s gross receipts tax revenues. In some cases, the Legislature has made amendments which negatively impacted the amount of gross receipts tax revenues received by local government.

In 2004, the Legislature adopted legislation creating a deduction from gross receipts tax for receipts from retail sales of food (not including restaurant sales and certain sales of prepared foods) as defined for federal food stamp program purposes. Retailers are required to report receipts from sales of such groceries and then claim the deduction. The statute provides for payments to be made from the State general fund to reimburse local governments for revenues lost as a result of the new deductions (the “Hold Harmless Distributions”). Those distributions are included within Pledged Revenues. In the same year, the Legislature created a deduction from gross receipts tax for receipts of licensed medical care providers from Medicare Part C and managed health plans that by contract do not reimburse providers for gross receipts tax. This legislation includes provision for payments from the State general fund to reimburse local governments for revenues lost as a result of this deduction. The Hold Harmless Distributions are included within the Pledged Tax Revenues but, as described below, will be phased out over a 15-year period, which began July 1, 2015.

In 2013 the Legislature adopted legislation amending several provisions of New Mexico’s tax code, including a phased reduction in the Hold Harmless Distributions to certain municipalities and counties over 15 years beginning with the Fiscal Year that started July 1, 2015. The law as currently enacted will result in annual reductions and ultimately the elimination of the Hold Harmless Distributions to the City, which began on July 1, 2015, as follows:

| Fiscal year ending June 30 | % of Total Hold Harmless Distribution* |
|----------------------------|--|
| 2016 | 94% |
| 2017 | 88% |
| 2018 | 82% |
| 2019 | 76% |
| 2020 | 70% |
| 2021 | 63% |
| 2022 | 56% |
| 2023 | 49% |
| 2024 | 42% |
| 2025 | 35% |
| 2026 | 28% |
| 2027 | 21% |
| 2028 | 14% |
| 2029 | 7% |
| 2030 | -0- |

* Based on percentage of total deductions from gross receipts claimed for sale of food at retail food stores and services provided by health care practitioners.

In order to offset the reduced Hold Harmless Distributions, the law allows municipalities and counties to impose a local option gross receipts tax of up to three-eighths of one percent (3/8%) (the “Hold Harmless Gross Receipts Tax”). It is possible that the New Mexico Legislature will further amend the law to provide for additional decreases in Hold Harmless Distributions in the event that a municipality

or county imposes any increment of the Hold Harmless Gross Receipts Tax. The City imposed an increment of the Hold Harmless Gross Receipts Tax at the rate of one quarter of one percent (0.25%) effective July 1, 2015. Revenues from the 0.25% Hold Harmless Gross Receipts Tax are not included in Pledged Revenues.

Other amendments to State laws affecting taxed activities and distribution of gross receipts tax revenues have been proposed from time to time and could be proposed in the future by the Legislature. There is no assurance that any future amendments will not adversely affect activities now subject to the gross receipts tax or distribution of gross receipts tax revenues to the City. Notwithstanding the foregoing, the provisions of State law authorizing the issuance of revenue bonds (including gross receipts tax bonds such as the Bonds) include a provision stating that any law which authorizes the pledge of revenues to the payment of revenue bonds, or which affects the pledged revenue “shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds.”

Bankruptcy and Foreclosure

The ability and willingness of an owner or operator of a business to pay gross receipts taxes may be adversely affected by the filing of a bankruptcy proceeding by the owner. The ability to collect delinquent gross receipts taxes using foreclosure and sale for non-payment of taxes may be forestalled or delayed by bankruptcy, reorganization, insolvency or other similar proceedings affecting the owner or operator of a business. The Federal bankruptcy laws provide for an automatic stay of foreclosure and sale proceedings, thereby delaying such proceedings, perhaps for an extended period. Delays in the exercise of remedies could result in gross receipts tax collections that may be insufficient to pay debt service on Bonds when due.

City Cannot Increase Rates of Taxes

The City has no control over the rate at which the State Gross Receipts Tax is imposed; the rate can be increased only by action of the State Legislature. Although it is possible that the State Legislature will increase the rate of distribution to the City, there is currently no legislation proposed or pending to increase the rate of distribution to the City.

Additional Parity Bonds

Pursuant to the Bond Ordinance, the City has the right to issue one or more series of additional bonds and other types of securities and obligations payable wholly or in part from Pledged Revenues and secured by a lien thereon on parity with the lien thereon of the Bonds (“Additional Bonds”). Such Additional Bonds would have a lien on the Pledged Revenues on parity with the lien of the Bonds. As a result, if Pledged Revenues are insufficient to pay debt service on the Bonds and the Additional Bonds in any year, debt service will be paid on a proportionate basis.

Secondary Market

At this time no guarantee can be made that a secondary market for the Bonds will be developed or maintained by the initial purchasers of the Bonds or others. Owners of the Bonds should be prepared to hold their Bonds to maturity or prior redemption.

Limited Obligations

The Bonds constitute a lien only on the Pledged Revenues. Therefore, the security for the punctual payment of the principal of and interest on the Bonds is dependent on the City’s receipt of the

Pledged Revenues in amounts sufficient to meet the debt service requirements of the Bonds. See “SECURITY AND SOURCES OF PAYMENT” herein. The Bonds and the interest thereon do not constitute a debt or indebtedness of the City within the meaning of any provision or limitation of the Constitution or laws of the State and do not give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. Further, the Bonds are not obligations of the State, and the owners of the Bonds may not look to the State for payment of the principal of or interest on the Bonds.

Bond Ratings

There is no assurance that the ratings assigned to the Bonds will not be lowered or withdrawn at any time, the effect of which could adversely affect the market price or the marketability of the Bonds. See the information herein under the caption “RATINGS” herein.

Bond Insurance Risk

In the event of default of the payment of principal or interest with respect to any of the Bonds when all or some become due, any owner of the Bonds on which such principal or interest was not paid will have a claim under the Policy for such payments. In the event the Bond Insurer is unable to make payment of principal and interest as such payments become due under the Policy, the Bonds will remain payable solely from the Pledged Revenues as described under “THE BONDS – Source of Payment and Security.” In the event the Bond Insurer becomes obligated to make payments with respect to the Bonds, no assurance will be given that such event will not adversely affect the market price of the Bonds and the marketability (liquidity) of the Bonds.

The long-term ratings on the Bonds will be dependent in part on the financial strength of the Bond Insurer and its claims paying ability. The Bond Insurer’s financial strength and claims paying ability will be predicated upon a number of factors which could change over time. No assurance will be given that the long-term rating of the Bond Insurer and of the Bonds insured by the Bond Insurer will not be subject to downgrade, and such event could adversely affect the market price of the Bonds and the marketability (liquidity) of the Bonds.

The obligations of the Bond Insurer will be general obligations of the Bond Insurer, and in an event of default by the Bond Insurer, the remedies available may be limited by applicable bankruptcy law, state receivership or other similar laws related to insolvency of insurance companies.

None of the City, the Financial Advisor, the Underwriters, or their respective attorneys, agents or consultants have made independent investigation into the claims paying ability of the Bond Insurer and no assurance or representation regarding the financial strength or projected financial strength of the Bond Insurer will be given. Thus, when making an investment decision, potential investors should carefully consider the ability of the City to pay principal of and interest on the Bonds and the claims paying ability of the Bond Insurer, particularly over the life of the investment.

PURPOSE AND PLAN OF FINANCING

Sources and Uses of Funds

The estimated sources and uses of funds to be received in connection with the sale of the Bonds are set forth in the following table.

| | | | |
|----------------------------------|--|--|----------|
| <u>SOURCES OF FUNDS:</u> | | | |
| | | | \$ _____ |
| Par Amount of Bonds | | | \$ _____ |
| Net Original Discount/Premium | | | _____ |
| City Cash Contribution | | | _____ |
| Series 2010 Bonds DSRF | | | _____ |
| TOTAL SOURCES OF FUNDS | | | \$ _____ |
| <u>USES OF FUNDS:</u> | | | |
| | | | \$ _____ |
| Deposit to Escrow Fund | | | \$ _____ |
| Costs of Issuance ⁽¹⁾ | | | _____ |
| TOTAL USES OF FUNDS | | | \$ _____ |

⁽¹⁾ Includes legal and financial advisory fees, underwriters’ discount and the premium for the municipal bond insurance policy and reserve fund insurance policy.

The Project Plan

The Bonds are being issued to provide funds to defray the costs of (1) paying, refunding and discharging the Series 2010 Bonds maturing on and after June 1, 2020 (the “Refunded Bonds”), (2) funding a Debt Service Reserve Fund for the Bonds and (3) paying all costs related thereto and to the issuance of the Bonds. The City’s purposes in refunding and discharging the Refunded Bonds are to lower the interest rate and the overall annual debt service requirements of the City’s debt.

The principal and interest due on the Refunded Bonds are to be paid on June 1, 2019, the first optional redemption date for Refunded Bonds. All payments of principal and interest due on the Series 2010 Bonds maturing on and after June 1, 2019 shall be paid as herein described from funds to be deposited pursuant to a certain Escrow Agreement (the “Escrow Agreement”) between the City and BOKF, NA, Albuquerque, New Mexico (the “Escrow Agent”). The Bond Ordinance provides that from the proceeds of the sale of the Bonds received from the Underwriters, the City will deposit with the Escrow Agent the amount necessary to accomplish the discharge and final payment of the Series 2010 Bonds on June 1, 2019. Such funds will be held by the Escrow Agent in a special escrow account (the “Escrow Fund”) and used to purchase direct obligations of the United States of America (the “Defeasance Obligations”). On the date of issuance of the Bonds, the City will defease the Series 2010 Bonds maturing on June 1, 2019 by depositing available funds of the City in the Escrow Fund. Under the Escrow Agreement, the Escrow Fund is irrevocably pledged to the payment of the principal and interest on the Series 2010 Bonds.

Causey, Demgen & Moore, P.C. (the “Verification Agent”) will verify at the time of delivery of the Bonds to the Underwriters, the mathematical accuracy of (i) the schedules and demonstrate the

Defeasance Obligations will mature and bear interest in such amounts which, together with uninvested funds, if any, in the Escrow Fund, will be sufficient to pay when due, the principal of and interest on the Series 2010 Bonds on June 1, 2019. Such maturing principal of and interest on the Federal Securities will not be available to pay the Bonds. See “VERIFICATION OF CERTAIN MATHEMATICAL COMPUTATIONS.”

By the deposit of the Defeasance Obligations and cash, if necessary, with the Escrow Agent pursuant to the Escrow Agreement, the City will have affected the defeasance of the Series 2010 Bonds in accordance with the requirements of the ordinance authorizing issuance of the Series 2010 Bonds, and applicable law, and the Series 2010 Bonds will no longer be outstanding as Parity Obligations. The City has covenanted in the Escrow Agreement to make timely deposits to the Escrow Account of any additional amounts required to pay the principal of, premium and interest on the Series 2010 Bonds if, for any reason, the cash balance on deposit or scheduled to be on deposit in the Escrow Account is insufficient to make such payments.

DEBT SERVICE SCHEDULE*

| Year Ending (June 30) | Estimated Principle on Series 2019 Bonds* | Estimated Interest on Series 2019 Bonds ⁽¹⁾ | Estimated Debt Service on Series 2019 Bonds ⁽¹⁾ | Series 2010 Bonds Debt Service ⁽³⁾ | Total Combined Debt Service | Estimated Pledged Revenues ⁽²⁾ | Series 2019 Bonds Debt Service Coverage ⁽¹⁾ |
|--------------------------|--|---|--|---|--------------------------------------|---|---|
| 2019 | - | \$35,125 | \$35,125 | \$803,431 | \$838,556 | \$1,923,971 | 2.29x |
| 2020 | \$475,000 | 281,000 | 756,000 | 0 | 756,000 | 1,923,971 | 2.54x |
| 2021 | 505,000 | 257,250 | 762,250 | 0 | 762,250 | 1,923,971 | 2.52x |
| 2022 | 525,000 | 232,000 | 757,000 | 0 | 757,000 | 1,923,971 | 2.54x |
| 2023 | 555,000 | 205,750 | 760,750 | 0 | 760,750 | 1,923,971 | 2.53x |
| 2024 | 585,000 | 178,000 | 763,000 | 0 | 763,000 | 1,923,971 | 2.52x |
| 2025 | 610,000 | 148,750 | 758,750 | 0 | 758,750 | 1,923,971 | 2.54x |
| 2026 | 645,000 | 118,250 | 763,250 | 0 | 763,250 | 1,923,971 | 2.52x |
| 2027 | 685,000 | 86,000 | 771,000 | 0 | 771,000 | 1,923,971 | 2.50x |
| 2028 | 715,000 | 58,600 | 773,600 | 0 | 773,600 | 1,923,971 | 2.49x |
| 2029 | 750,000 | 30,000 | 780,000 | 0 | 780,000 | 1,923,971 | 2.47x |
| Total | \$6,050,000 | \$1,595,600 | \$7,680,725 | \$803,431 | \$8,484,156 | | |

* Preliminary, subject to change. Amounts rounded to the nearest dollar.

⁽¹⁾ Based on assumed average interest rate of 4.46%, subject to change.

⁽²⁾ Total Debt Service Coverage includes Net Revenues for FY 2018 of \$923,971 plus Pledged Tax Revenues of \$1,000,000. There is no assurance that Pledged Revenues received in the future will equal the Pledged Revenues used in the coverage computation.

⁽³⁾ Excludes debt service on the Series 2010 Bonds maturing June 1, 2020 through June 1, 2029, which will be defeased upon issuance of the Bonds. The City will defease the June 1, 2019 maturity of the Series 2010 Bonds with available funds on the delivery date of the Series 2019 Bonds.

THE BONDS

Generally

The City is authorized under Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, to issue joint utility revenue bonds, including the Bonds, and to pledge joint utility revenues and gross receipts tax revenues pursuant to the Bond Ordinance. The Bonds shall be dated the date of initial delivery to the Underwriters (the "Dated Date"), will be issued in the aggregate principal amount of \$6,050,000*, are issuable in denominations of \$5,000 each or any integral multiple thereof, shall bear interest from the Dated Date until maturity at the rates shown on the inside cover page hereof payable on June 1, 2019 and semiannually thereafter on December 1 and June 1 in each year, and shall mature on June 1 in the years and in the amounts shown on the inside of the cover page hereof (unless redeemed prior to maturity).

Special Limited Obligations

The Bonds are special limited obligations of the City, payable solely from and secured by the Pledged Revenues. The Pledged Revenues consist of Net Revenues of the System and the Pledged Tax Revenues. For a more complete description of the pledge for payment of the Bonds, see "SECURITY AND SOURCES OF PAYMENT." *Except as described in the preceding sentences, the registered owners of the Bonds may not look to any general or other municipal fund of the City for payment of the principal of and interest on the Bonds. The Bonds do not constitute a general obligation of the City, and registered owners of the Bonds have no right to have any additional taxes levied for the payment therefor.*

Payment - Regular and Special Record Dates

The principal and interest on the Bond shall be payable to the registered owner thereof as shown on the registration books kept by the City Clerk-Treasurer, as Registrar and Paying Agent for the Bonds upon maturity or prior redemption thereof and upon presentation and surrender at the Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity (including sinking fund redemption, if any), or on a designated prior redemption date on which the City may exercise its right to prior redeem such Bond pursuant to the ordinance, it shall continue to draw interest at the rate borne by such Bond until the principal thereof is paid in full. Payment of interest on any Bond shall be made to the registered owner thereof as of the 15th calendar day of the month preceding each interest payment date (the "Regular Record Date") by check or draft mailed by the Registrar, on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day), to the registered owner thereof on the Regular Record Date at his address as it last appears on the registration books kept by the Registrar on the Regular Record Date (or by such other arrangement as may be mutually agreed to by the Registrar and any registered owner on such Regular Record Date). All such payments shall be made in lawful money of the United States of America. The person in whose name any Bond is registered at the close of business on any Regular Record Date with respect to any interest payment date shall be entitled to receive the interest payable thereon on such interest payment date notwithstanding any transfer or exchange thereof registered subsequent to such Regular Record Date and prior to such interest payment date; but any such interest not so timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person in whose name any Bond is registered at the close of business on a Special Record Date fixed by the Registrar for the payment of any such defaulted interest. Such Special Record Date shall be fixed by the Registrar

*Preliminary; subject to change

whenever moneys become available for defaulted interest, and notice of any such Special Record Date shall be given not less than 10 days prior thereto, by first-class mail, to the registered owners of the Bonds as of a date selected by the Registrar, stating the Special Record Date and the date fixed for the payment of such defaulted interest.

Registration

Transfer and Exchange

Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer of any Bonds at the Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the Registrar for an equal aggregate principal amount of Bonds of the same maturity of other authorized denominations. The Registrar shall authenticate and deliver a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as provided in the Bond Ordinance shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of any Bond requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

Times When Transfer or Exchange Not Required

The Registrar shall not be required (1) to transfer or exchange all or a portion of any Bond subject to optional prior redemption during the period of 15 days next preceding the mailing of notice to the registered owners calling any Bonds for optional prior redemption pursuant to the Bond Ordinance or (2) to transfer or exchange all or a portion of a Bond after the mailing to registered owners of notice calling such Bond or portion thereof for prior redemption.

Registered Owners

The person in whose name any Bond shall be registered, on the registration books kept by the Registrar, shall be deemed and regarded as the absolute owner thereof for all purposes; and payment of either principal of or interest on any Bond shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided in the Bond Ordinance. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

Replacement Bonds

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such information or indemnity relating thereto as it may reasonably require, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

Book-Entry Only System

Introduction

Unless otherwise noted, the information contained under the caption “General” below has been provided by DTC. None of the City, the Financial Advisor, Bond Counsel, the Underwriters or counsel to the Underwriters make any representations as to the accuracy or the completeness of such information. The Beneficial Owners of the Bonds should confirm the following information with DTC, the Direct Participants or the Indirect Participants.

NEITHER THE CITY NOR THE PAYING AGENT WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, TO INDIRECT PARTICIPANTS, OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (A) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT, OR ANY INDIRECT PARTICIPANT; (B) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE OWNERS OF THE BONDS UNDER THE BOND ORDINANCE, (C) THE SELECTION BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE BONDS; (D) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR INTEREST DUE WITH RESPECT TO THE OWNER OF THE BONDS; (E) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNERS OF BONDS; OR (F) ANY OTHER MATTER REGARDING DTC.

General

The Bonds will be issued in book entry form. DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation, and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to Direct Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com. The City

undertakes no responsibility for and makes no representations as to the accuracy or the completeness of the content of such material contained on that website as described in the preceding sentence, including, but not limited to, updates of such information or links to other Internet sites accessed through the aforementioned website.

Purchases of the Bonds under the DTC system must be made by or through Direct or Indirect Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices will be sent to DTC. If less than all of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's procedures. Under its usual procedures, DTC will mail an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal of and sinking fund and interest payments on the Bonds will be made to Cede & Co. or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, on each payable date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on the date payable. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, agent, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City or agent, disbursement of such

payments to Direct Participants shall be the responsibility of DTC or the Paying Agent, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the City. Under such circumstances, in the event that a successor securities depository is not obtained, security certificates are required to be printed and delivered as described in the Bond Ordinance.

The City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, the Bonds will be printed and delivered as described in the Bond Ordinance.

The City cannot and does not give any assurances that DTC will distribute to Participants, or that Participants or others will distribute to the Beneficial Owners, payments of principal of and interest and premium, if any, on the Bonds paid or any redemption or other notices or that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. The City is not responsible or liable for the failure of DTC or any Direct Participant or Indirect Participant to make any payments or give any notice to a Beneficial Owner with respect to the Bonds or any error or delay relating thereto.

The foregoing description of the procedures and record keeping with respect to beneficial ownership interests in the Bonds, payment of principal of and interest and other payments with respect to the Bonds to Direct Participants, Indirect Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in such Bonds and other related transactions by and between DTC, the Direct Participants, the Indirect Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the Direct Participants, the Indirect Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters but should instead confirm the same with DTC or the Participants, as the case may be.

SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE BONDS, AS NOMINEE OF DTC, REFERENCES HEREIN TO THE HOLDERS SHALL MEAN CEDE & CO., AS AFORESAID, AND SHALL NOT MEAN THE BENEFICIAL OWNERS OF THE BONDS.

The information in this Official Statement concerning DTC and DTC's book-entry system has been obtained from sources that the City believes to be reliable, but none of the City, the Financial Advisor, Bond Counsel, the Underwriters or counsel to the Underwriters takes any responsibility for the accuracy thereof.

Prior Redemption

*Optional Redemption**

Bonds maturing on and after June 1, 2027, shall be subject to prior redemption at the City's option in one or more units of principal of \$5,000 on and after June 1, 2026, in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner as the Registrar shall consider appropriate and fair), for 100% of the principal amount of each \$5,000 unit so redeemed, plus accrued interest thereon to the redemption date.

*Preliminary; subject to change

Notice of Redemption

Notice of redemption shall be given by the Registrar by sending a copy of such notice by first-class, postage prepaid mail, at least thirty (30) days prior to the redemption date to each registered owner of the Bond or Bonds to be prior redeemed as shown on the registration books kept by the Registrar as of the date of selection of units of principal for redemption. Unless waived by the Registrar, the Registrar shall not be required to give notice of any prior redemption unless the Registrar has received written instructions from the City in regard thereto, at least 45 days prior to such redemption date. Failure to give such notice by mailing to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any of the Bonds.

The notice required shall specify the number or numbers of the Bond or Bonds or portions thereof to be so redeemed if less than all are to be redeemed; and all notices required shall specify the date fixed for redemption, and shall further state that on such redemption date there will become and be due and payable upon each \$5,000 unit of principal so to be redeemed at the office of the Paying Agent the principal thereof, and that from and after such date interest will cease to accrue. Accrued interest to the redemption date will be paid by check or draft mailed to the registered owner (or by alternative means if so agreed to by the Paying Agent and the registered owner). Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated; and upon presentation thereof at the Paying Agent, the City will pay the Bond or Bonds so called for redemption. In the event that only a portion of the principal amount of a Bond is so redeemed, a new Bond representing the unredeemed principal shall be duly completed, authenticated and delivered by the Registrar to the registered owner without charge.

If money or Defeasance Obligations sufficient to pay the redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in a manner deemed appropriate and fair by the Registrar and the Registrar shall give notice, in the manner in which the original notice of optional redemption was given, that such money was not received and including the information hereinbefore provided. In that event, the Registrar shall promptly return to the owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been redeemed.

Creation and Administration of Funds

Administration of Income Fund

The Bond Ordinance requires that so long as any of the Bonds shall be outstanding, either as to principal or interest, or both, the City shall credit all revenues of the System to the "City of Artesia Water and Wastewater System Gross Income Fund" (the "Income Fund"). So long as any of the Bonds are outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Income Fund.

Operation and Maintenance Fund

As a first charge on the Income Fund, there shall from time to time be set aside into and credited to the "City of Artesia Water and Wastewater System Operation and Maintenance Fund," monies in the Income Fund sufficient to pay operation and maintenance expenses as they become due and payable, and thereupon shall be promptly paid.

The Debt Service Fund

As a second charge on the Income Fund, subordinate to the payments to the Operation and Maintenance Fund and on a parity with any monthly deposits for payment of principal and interest on Parity Obligations, from any moneys remaining in the Income Fund, i.e., from the Net Revenues of the System, there shall be credited to the "City of Artesia Water and Wastewater System Refunding Revenue Bonds, Series 2019, Debt Service Fund" (the "Debt Service Fund"), the following amounts:

(1) Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the Bonds, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of interest on the Bonds then outstanding, and monthly thereafter commencing on the interest payment date, one-sixth (1/6th) of the amount necessary to pay the next maturing installment of interest on the outstanding Bonds, and

(2) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Bonds, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of principal on the Bonds then outstanding and monthly thereafter commencing on the principal payment date, one-twelfth (1/12th) of the amount necessary to pay the next maturing installment of principal on the Bonds.

If, prior to any interest payment date or principal payment date, there has been accumulated in the Debt Service Fund the entire amount necessary to pay the next maturing installment of interest or principal, or both, the installments of interest or principal, as the case may be, referred to above may be appropriately reduced and the required monthly installments again shall be so credited to such account commencing on such interest or principal payment date, whichever is applicable. The moneys in the Debt Service Fund are irrevocably and exclusively pledged to the payment of the Bonds.

The Reserve Fund

Immediately upon delivery of the Bonds, cash or a reserve fund insurance policy in the amount of \$_____, representing an amount equal to the Reserve Fund Requirement, shall be deposited into and credited to the City of Artesia Water and Wastewater System Refunding Revenue Bonds, Series 2019, Reserve Fund (the "Reserve Fund") so that the Reserve Fund Requirement is accumulated upon delivery of the Bonds. The moneys and/or reserve fund insurance policy, if any, in the Reserve Fund are irrevocably and exclusively pledged to payment of the Bonds.

Third and subordinate to the payments required above and concurrently with the payments required for any monthly reserve fund payments for Parity Obligations, there shall be credited monthly to the Reserve Fund, from the Net Revenues, such cash amount or amounts, if any, or a reserve fund insurance policy in a sufficient amount, or both, as are necessary to maintain the Reserve Fund as a continuing reserve in an amount not less than the Reserve Fund Requirement to meet possible deficiencies in the Debt Service Fund. The moneys and a reserve fund insurance policy, if any, in the Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided, only to prevent deficiencies in the payment of the principal of and interest on the

Bonds hereby authorized resulting from the failure to credit to the Debt Service Fund sufficient funds to pay the principal and interest as the same become due and payable. Cash amounts in the Reserve Fund which together with the amount of a reserve fund insurance policy, as applicable, are in excess of the Reserve Fund Requirement shall be withdrawn from the Reserve Fund and deposited into the Debt Service Fund (including investment income therefrom) and shall be used to pay the principal of or interest on the Bonds or any obligations refunding the Bonds, subject only to the provisions of the Bond Ordinance.

Any reserve fund insurance policy shall be held by the Paying Agent. In the event of a draw upon a reserve fund insurance policy, the Paying Agent shall deliver a demand for payment in substantially the form required by the reserve fund insurance policy issuer to be delivered to the reserve fund insurance policy issuer at least 3 days prior to the date on which the funds are required. In the event there is cash in the Reserve Fund at the time of a draw from a reserve fund insurance policy, such cash (including any investments) shall be drawn down completely before any demand is made on the reserve fund insurance policy. If the Reserve Fund contains reserve fund insurance policies from more than one reserve fund insurance policy issuer, any draw shall be on a pro-rata basis from both. After such a draw, any available Net Revenues, concurrently and on a parity with the payments in described in the paragraph above, and the payments required to replenish the reserve fund for any additional Parity Obligations, shall be used first to reimburse each reserve fund insurance policy issuer for such payment of principal of and interest on the Bonds pursuant to the terms of the applicable agreement so as to reinstate each reserve fund insurance policy and thereafter to replenish any cash in the Reserve Fund.

Termination upon Deposits to Maturity

No payment need be made into the Debt Service Fund, the Reserve Fund or both if the amounts in the Debt Service Fund and the Reserve Fund (excluding the amount of a reserve fund insurance policy) total a sum at least equal to the entire amount of the outstanding Bonds authorized in the Bond Ordinance, both as to principal and interest to their respective maturities, and both accrued and not accrued, in which case, moneys in the two funds in amount at least equal to such principal and interest requirements shall be used solely to pay such as the same accrue and any moneys in excess thereof in the funds and any other moneys derived from the operation of the System be used for any other lawful purpose.

Defraying Delinquencies in Debt Service and Reserve Funds

If, in any month the City shall, for any reason fail to pay into the Debt Service Fund the full amount above stipulated from the Net Revenues of the System then an amount shall be paid into such Debt Service Fund in such month from the moneys, if any, in the Reserve Fund (including, as applicable, the amount of a reserve fund insurance policy except that there shall be no draw on a reserve fund insurance policy except immediately prior to an interest or principal payment date) equal to the difference between that paid from the Net Revenues and the full amount so stipulated. The money so used shall be replaced in the Reserve Fund and the reserve fund insurance policy issuer shall be reimbursed for any draw as provided above from the first revenues thereafter received from the operation of the System not required to be otherwise applied. If the City shall, for any reason, fail to pay into the Reserve Fund the full amount above stipulated from the Net Revenues of the System (or to reinstate the reserve fund insurance policy as provided above), the difference between the amount paid and the amount so stipulated shall in like manner be paid therein from the first revenues thereafter received from the operation of the System not required to be otherwise applied. The moneys in the Debt Service Fund and the Reserve Fund (including the amount represented by a reserve fund insurance policy) shall be used solely and only for the purpose of paying the principal of and the interest on the Bonds issued hereunder; provided, however, that any moneys in the Debt Service Fund and the Reserve Fund (excluding the amount represented by a

reserve fund insurance policy) in excess of accrued and unaccrued principal and interest requirements to the respective maturities of the outstanding Bonds may be withdrawn and used for any lawful purpose.

Rebate Fund

The Bond Ordinance creates the “City of Artesia Water and Wastewater System Refunding Revenue Bonds, Series 2019, Rebate Fund” (the “Rebate Fund”). Amounts on deposit in the Rebate Fund shall not be subject to the lien and pledge of the Bond Ordinance to the extent they are required to be paid to the United States Treasury. Fourth, and after and subordinate to the payments required above but on a parity with any rebate fund or account which may be established for any Parity Obligations to which the Net Revenues have been pledged in whole or in part, there shall be transferred into the Rebate Fund from the Income Fund, such amounts as are required to be deposited therein to meet the City’s obligations under the tax covenant contained in the Bond Ordinance, in accordance with Section 148(f) of the Tax Code and which have not been deposited into the Rebate Fund from other sources. Amounts in the Rebate Fund shall be used for the purpose of making the payments to the United States required by Section 148(f) of the Tax Code. Any amounts in the Rebate Fund in excess of those required to be on deposit therein by Section 148(f) of the Tax Code shall be withdrawn therefrom and deposited into the Income Fund, Debt Service Fund or the Reserve Fund as may be permitted by law.

Interest on Reserve Fund Insurance Policy Draws

Fifth, and subordinate and subsequent to the payments described above, Net Revenues of the System shall be used to pay interest on amounts advanced under a reserve fund insurance policy, pursuant to a guaranty agreement or under any relevant agreement.

Subordinate Obligations

Sixth, and subordinate to and after making the payments described above, any balance in the Income Fund shall be used to pay principal of, interest on and any reserve fund for obligations payable from the Net Revenues having a lien thereon which is subordinate and junior to the lien of the Bonds.

Use of Surplus Revenues

Seventh, subordinate to, and after making the required payments from the Income Fund as described above, and after any payments which may be required by any ordinance or resolution hereafter adopted related to the payment of additional obligations, the remaining Net Revenues, if any, may be applied to any other lawful purpose or purposes authorized by the Constitution and laws of the State of New Mexico, as the City Council may direct.

Use of Pledged Tax Revenues

As long as any System Bonds are outstanding, all Pledged Tax Revenues shall be used by the City to meet any payment required above, and, to the extent not so used, may be applied to any other lawful purpose authorized by City Ordinance No. 772, as determined by the City.

General Administration of Funds

The funds and accounts designated in the Bond Ordinance shall be administered as follows:

Investment of Money

Any moneys in any fund designated in the Bond Ordinance may be invested in Permitted Investments (as defined in the Bond Ordinance). The obligations so purchased as an investment of moneys in such fund shall be deemed at all times to be part of such fund, and the interest accruing thereon and any profit realized therefrom shall be credited to the fund, and any loss resulting from each investment shall be charged to the fund. The City Clerk-Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund. All of the amounts on deposit in the accounts and funds created and established by the Bond Ordinance and all amounts pledged to the payment of debt service for the Bonds shall be invested in compliance with the requirements of the Bond Ordinance.

Deposit of Funds

The moneys and investments comprising each of the funds and accounts designated in the Bond Ordinance shall be held by the City and maintained and kept separate from all other funds and accounts. The amounts prescribed shall be paid to the appropriate funds as specified in the Bond Ordinance. Each payment shall be made into the proper account and credited to the proper fund not later than the last day designated; provided that when the designated date is not a business day, then such payment shall be made on the next succeeding business day. Nothing in the Bond Ordinance prevents the establishment of one such account or more (or consolidation with any existing account), for all of the funds and accounts described in the Bond Ordinance.

Additional Bonds

Limitations upon Issuance of Parity Obligations

Nothing contained in the Bond Ordinance shall be construed in such a manner as to prevent the issuance by the City of additional bonds or other obligations payable from the Pledged Revenues and constituting a lien upon the Pledged Revenues on a parity with, but not prior or superior to, the lien of the Bonds, nor to prevent the issuance of bonds or other obligations refunding all or a part of the Bonds, provided, however, that before any such additional Parity Obligations are authorized or actually issued:

(1) The City is then current in all of the accumulations required to be made into the Debt Service Fund and Reserve Fund (which includes any amount furnished by a reserve fund insurance policy, if any) pursuant to the Bond Ordinance; and

(2) either:

(a) The City is then current in all of the accumulations required to be made into the Debt Service Fund and Reserve Fund (including an amount furnished by a reserve fund insurance policy, if any) pursuant to Section 20 of the Bond Ordinance, and

(b) The Pledged Revenues received by the City for the Fiscal Year immediately preceding the date of the issuance of such additional Parity Obligations shall have been sufficient to pay an amount representing at least 120% of the combined maximum annual principal and

interest coming due in any subsequent Fiscal Year on the then outstanding Bonds, all other than outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding any reserves therefor).

For purposes of the tests set forth in clauses (a) and (b) above, if on the date of issuance of any such Parity Obligations the full amount of a reserve fund requirement for the Parity Obligations is immediately funded or capitalized from the proceeds of such Parity Obligations, the amount of such reserve fund requirement so funded shall be deducted from the Principal and Interest Coming Due in the final fiscal year for the proposed additional Parity Obligations.

Adjustment of Expenses and Revenues

In determining whether or not the additional Parity Obligations may be issued as aforesaid:

(1) Consideration shall be given to any probable increase or reduction in Operation and Maintenance expenses that will result from the expenditure of the funds proposed to be derived from the issuance and sale of the bonds or other obligations; and

(2) The revenues of the System shall be increased if any schedule of rate increases shall have been adopted by ordinance, resolution or other appropriate action and shall have become effective (and the time during which a referendum petition if applicable with respect to such ordinance, resolution or other appropriate action has expired prior to the issuance of the Parity Obligations), by an amount conservatively estimated to equal the difference between the gross revenues actually received by the City and the gross revenues which the City probably would have received during the Fiscal Year if the last of any such schedule of rate increases had been in effect during the entire Fiscal Year.

Certification or Opinion of Pledged Revenues

A written certification or opinion by the City Clerk-Treasurer that the annual Pledged Revenues for such preceding Fiscal Year are sufficient to pay the amounts set forth above shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver the additional Parity Obligations.

Nothing in the Bond Ordinance shall be construed in such a manner to prevent the issuance by the City of additional bonds or other obligations payable from the Pledged Revenues and constituting a lien on the Pledged Revenues of the System subordinate or junior to the lien of the Bonds. Nothing in the Bond Ordinance shall be construed so as to permit the City to issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to the lien thereon of the Bonds.

Refunding Obligations

The City is also allowed to issue parity refunding obligations for the purpose of refunding other outstanding obligations that are payable out of the Pledged Revenues on a parity with the Bonds, if the lien on the Pledged Revenues of the outstanding obligations being refunded is on a parity with the lien thereon of the Bonds or the refunding bonds are issued in compliance with the test set forth above for additional Parity Obligations. If only a part of the outstanding obligations of any issue payable from Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the registered owners of the unrefunded portion of such obligations unless the refunding bonds or other refunding obligations do not increase any aggregate principal and interest requirements evidenced by such refunding obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations, or the refunding bonds or other refunding obligations are issued in

compliance with the test set forth above for additional Parity Obligations, or the lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

Protective Covenants

The City's covenants in the Bond Ordinance include the following:

A. Use of Bond Proceeds. The City will proceed without delay to apply the proceeds of the Bonds to complete the Project as provided in the Bond Ordinance.

B. Payment of Bonds. The City will promptly pay the principal of and the interest on every Bond issued and secured under the Bond Ordinance at the place, on the dates and in the manner specified in the Bond Ordinance and in the Bonds according to the true intent and meaning therein. Such principal and interest are payable solely from the Pledged Revenues, provided that, nothing in the Bonds or in the Bond Ordinance shall prevent the City, in its discretion, from paying such principal and interest from any other legally available funds.

C. Rate Covenant.

(1) The City covenants that it will at all times fix rates and collect charges for each class of service rendered by the System, and to, from time to time, amend or adjust such rates so that Revenues of the System shall always be sufficient to provide for the payment of operation and maintenance expenses, expenses of administration, other expenses which may be necessary to preserve the System in good repair and working order, including the necessary reserves therefor and all other payments necessary to meet ongoing legal obligations to be paid at that time; and

(2) The City further covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year the Pledged Revenues (specifically including both the Net Revenues and the Pledged Tax Revenues) shall at least equal to 120% of the combined annual principal and interest coming due on the then outstanding Bonds and all other then outstanding Parity Obligations; and

(3) Failure by the City to comply with the foregoing Rate Covenant in any Fiscal Year will not constitute an event of default under the Bond Ordinance so long as the City, within 180 days after the end of any such Fiscal Year, adopts the schedule of rates and charges recommended or approved by a Consulting Engineer or City staff which would bring the City into compliance with the Rate Covenant. The City shall in each Fiscal Year complete a review of its financial condition for the purpose of estimating whether the Pledged Revenues for such Fiscal Year and for the next succeeding Fiscal Year will be sufficient to comply with the Rate Covenant set forth above. If the City determines that the Pledged Revenues may not be sufficient, it shall cause the Consulting Engineer or City staff to make a study for the purpose of recommending a schedule of fees, rates and charges for the System which, in the opinion of the Consulting Engineer or City staff, will cause sufficient Revenues of the System, together with Pledged Tax Revenues, to be collected in such Fiscal Year sufficient to eliminate the amount of any deficiency at the earliest practicable time within such Fiscal Year. The City shall as promptly as practicable adopt and place in effect the schedule of fees, rates and charges recommended or approved by the Consulting Engineer or City staff. In the alternative of establishing fees, rates and charges necessary to meet the Rate Covenant set forth above, the City may implement reductions in the operation and maintenance expenses for the System in an amount sufficient to meet the Rate Covenant; and

(4) No free service, facilities nor commodities shall be furnished by the System. Should the City elect to use for municipal purposes water supplied by, or the wastewater or other facilities of the System, or any combination thereof, or in any other manner use the System, or any part thereof, any use of the System by or of the services rendered thereby to the City, or any department, board or agency thereof the City may utilize these facilities, commodities or services for free or at reduced rates to be paid for from the City's general fund or other available revenues at the reasonable value of the use so made, or service, facility or commodity so rendered, and all revenue, if any, so derived from the City shall be deemed to be income derived from the operation of the System, to be used and accounted for in the same manner as any other income derived from the operation of the System; and

(5) The City is granted by statute a lien upon each lot or parcel of land in the City for the charges imposed hereunder of water and sewer services supplied by the System to the owner thereof (except as otherwise provided in Section 3-23-6 NMSA 1978), and the City expressly covenants and agrees that it will cause each such lien to be perfected in accordance with the provisions of Sections 3-23-6 and 3-36-1 through 3-36-7 NMSA 1978, as from time to time amended and supplemented, and the City covenants and agrees that it will take all reasonable steps necessary to enforce such lien as to each piece of property the owner of which shall be delinquent for more than 6 months in the payment of charges imposed hereunder.

D. Levy of Charges. The City will forthwith and in any event prior to the delivery of any of the Bonds fix, establish and levy the rates and charges which are required by the Bond Ordinance, if such action be necessary therefor. No reduction in any initial or existing rate schedule for the System may be made unless:

(1) The City has fully complied with the provisions of the Bond Ordinance for at least the full Fiscal Year immediately preceding such reduction of the initial rate schedule; and

(2) The audit required by the Bond Ordinance or a separate certificate by an Independent Accountant for or relating to the full Fiscal Year immediately preceding such reduction discloses that the Pledged Revenues resulting from the proposed reduced rate schedule will be sufficient to meet the rate covenant contained in the Bond Ordinance.

E. Efficient Operation. The City will (i) operate the System so long as any of the Bonds herein authorized are outstanding, (ii) maintain the System in efficient operating condition and (iii) make such improvements, extensions, enlargements, repairs and betterments thereto as may be necessary or advisable to insure its economical and efficient operation at all times and to the extent sufficient to supply public or private demands for service within the City and the territory adjacent thereto.

F. City's Existence. The City will maintain its corporate identity and existence so long as any of the Bonds remain outstanding, unless another political subdivision by operation of law succeeds to the duties, privileges, powers, liabilities, disabilities, immunities and rights of the City and is obligated by law to receive and distribute the Pledged Revenues in place of the City, without adversely affecting to any substantial degree the privileges and rights of any holder or holders of the Bonds.

G. Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Bonds, and the City will not directly or indirectly be a party to or approve any arrangements for any such extension.

H. Records. So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts,

showing complete and correct entries of all transactions relating to the System and the Net Revenues. Such books shall include (but not necessarily be limited to) annual records showing:

- (1) The number of customers separately for the water facilities and the wastewater facilities;
- (2) The revenues separately received from charges by classes of customers, including but not necessarily limited to classification by water facilities and wastewater facilities; and
- (3) A detailed statement of the expenses of the System.

I. Right to Inspect. Any registered owner of any of the Bonds, or any duly authorized agent or agents of such registered owner, shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect the System and all properties comprising the System.

J. Audits and Budgets. The City will, within one hundred and eighty (180) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to System and the Pledged Revenues to be made showing the receipts and disbursements in connection with the System and the Pledged Revenues unless the audit cannot be conducted within one hundred and eighty (180) days following the close of each Fiscal Year because the State Auditor or other authority of the State with superintending control of the audit directs that the audit be made by a designated auditor under different time deadlines or by the State Auditor's office and staff, in which case, the City will use its best efforts to have the audit completed as soon as possible following the close of the Fiscal Year.

K. Billing Procedure. All bills for water, water service or facilities, wastewater service or facilities furnished or served by or through the System shall be rendered to customers on a regularly established basis in each and every month either monthly in advance or in the month next succeeding the month in which the service was rendered and shall be due within 20 days from the date rendered; and in the event the bills are not paid within 35 days after the date when rendered, water and wastewater service shall be discontinued, except as otherwise provided by law, and the rates and charges due shall be collected in a lawful manner, including but not limited to the cost of disconnection and reconnection. Water and wastewater charges may be billed jointly with each other; provided that each such joint bill shall show separately water and wastewater charges.

L. Other Liens. Other than as described and identified in the Bond Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

M. Impairment of Contract. The City agrees that any law, ordinance or resolution of the City that in any manner affects the Pledged Revenues or the Bonds shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding Bonds are obtained pursuant to the Bond Ordinance.

N. Debt Service Fund and Reserve Fund. The Debt Service Fund and Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in the Bond Ordinance.

O. Charges and Liens upon System. From the Revenues of the System, the City will pay all taxes and assessments or other municipal or governmental charges, if any, lawfully levied, assessed upon or in respect to the System, or any part thereof, when the same shall become due, and it

will duly observe and comply with all valid requirements of any municipal or governmental authority relative to any part of the System. The City will not create or suffer to be created any lien or charge upon the System or upon the Revenues therefrom except as permitted herein, or it will make adequate provisions to satisfy and discharge within 60 days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon the System or upon the Revenues therefrom; provided, however, that nothing herein shall require the City to pay or cause to be discharged, or make provision for any such tax assessment, lien or charge before the time when payment thereof shall be due or so long as the validity thereof shall be contested in good faith by appropriate legal proceedings.

P. Performing Duties. The City will faithfully and punctually perform all duties with respect to the System, the Project, the Pledged Revenues and the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City relating to the Bonds including but not limited to the making and collecting of reasonable and sufficient rates and charges for services rendered or furnished by the System as provided in the Bond Ordinance, and the proper segregation of the Pledged Revenues and their application of the respective funds and accounts.

Q. Insurance. The City in its operation of the System will carry fire and extended coverage insurance, and other types of insurance in such amounts and to such extent as is normally carried by municipal corporations operating public utilities of the same type including, but not limited to self-insurance and self-insurance pools. The cost of such insurance shall be considered as one of the operating costs of the System. In the event of property loss or damage, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged, and any remainder shall be treated as Net Revenues of the System, and shall be subject to distribution in the manner provided hereinabove for Net Revenues derived from the operation of the System.

R. Alienating System. The City will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, the System, or any part thereof, including any and all extensions and additions that may be made thereto, until all the Bonds shall have been paid in full, both principal and interest, or there has been defeasance as provided in the Bond Ordinance or unless provision has been made therefor, except that the City may sell any portion of the property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the System, but in no manner nor to such extent as might prejudice the security for the payment of the Bonds, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net Revenues of the System in accordance with the provisions of the Bond Ordinance.

S. Surety Bonds. Each municipal official or other person having custody of any funds derived from operation of the System, or responsible for their handling, shall be bonded at all times, which bond shall be conditioned upon the proper application of the funds. The cost of each such bond shall be considered one of the operating costs of the System.

T. Competent Management. The City shall employ or contract for experienced and competent management personnel for each component of the System.

U. Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor and other officers of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates

on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely rebate payments to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

Money and investments in the Rebate Fund shall not be used for the payment of the Bonds and amounts credited to the Rebate fund shall be free and clear under any pledge under the Bond Ordinance. Money in the Rebate Fund shall be invested in a manner provided in the Bond Ordinance for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the City.

Defeasance

When all principal, interest and prior redemption premium, if any, in connection with the Bonds have been duly paid, the pledge and lien for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of the Bond Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations, as defined below) to meet all requirements of principal, interest and prior redemption premium, if any, as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section, shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – “SLGs”), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Events of Default

Each of the following events is declared in the Bond Ordinance as an “event of default” with respect to the Bonds:

A. Nonpayment of Principal. Failure to pay principal of any of the Bonds when the same become due and payable, either at maturity or by proceedings for prior redemption or otherwise; or

B. Nonpayment of Interest. Failure to pay any installment of interest when the same shall become due and payable; or

C. Incapable to Perform. If the City shall for any reason be rendered incapable of fulfilling its obligations under the Bond Ordinance; or

D. Default of Any Other Provision. If the City shall default in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or Bond Ordinance on its part to be performed (other than with respect to payment of principal or interest on the Bonds), and if such default shall continue for 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the City by the holders of at least 25% in aggregate principal amount of Bonds then outstanding.

Duties upon Default

Upon the happening of any of the events of default provided above, the City will do and perform all proper acts on behalf of and for the holder or holders of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived from the Pledged Revenues, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in the Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the holder or holders of the Bonds as hereinabove provided.

Remedies upon Default

Upon the happening and continuance of any of the events of default as provided above, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under the Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any holder of the Bonds, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of such holder or holders so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such

holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Amendments to the Bond Ordinance

The Bond Ordinance may be amended or supplemented by the Pricing Certificate and by ordinance or resolution adopted by the City Council in accordance with the laws of the State of New Mexico as follows:

A. Without Consent or Notice. The Bond Ordinance may be amended or supplemented without the consent of, or notice to, the holders of the Bonds for any one or more or all of the following purposes:

(1) To add to the covenants and agreements in the Bond Ordinance other covenants and agreements thereafter to be observed for the protection or benefit of the registered owners of the Bonds;

(2) To cure any ambiguity, to cure, correct or supplement any defect or inconsistent provision contained in the Bond Ordinance, or to make any provision with respect to matters arising under the Bond Ordinance or for any other purpose if such provisions are necessary or desirable and do not adversely affect the interests of the holders of the Bonds; or

(3) To subject to the Bond Ordinance additional revenues, properties or collateral; and

(4) To make additional changes required in connection with the issuance and sale of the Bonds as set forth in the Pricing Certificate.

B. With Consent of the Registered Owners. In addition, the Bond Ordinance and Sale Resolution may be amended, without receipt by the City of any additional consideration but with the written consent of the holders of 75% of the Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

(1) An extension of the maturity of any Bond authorized by the Bond Ordinance;

(2) A reduction in the principal amount of any Bond or the rate of interest thereon; or

(3) The creation of a lien upon the Pledged Revenues ranking prior to the lien or pledge created by the Bond Ordinance; or

(4) A reduction of the principal amount of Bonds required for consent to such amendatory or supplemental ordinance; or

(5) The establishment of priorities as between Bonds issued and outstanding under the provisions of the Bond Ordinance; or

(6) The modification of or otherwise affecting the rights of the registered owners of less than all of the Bonds then outstanding.

SECURITY AND SOURCES OF PAYMENT

Limited Obligations

The Bonds are limited obligations of the City and are payable as to principal and interest exclusively from the Pledged Revenues. Pledged Revenues consist of the Net Revenues and the Pledged Tax Revenues. Net Revenues consist of Gross Revenues less Operation and Maintenance Expenses. Pledged Tax Revenues consist of (a) the first \$1,000,000 received during each Fiscal Year from the City's sixth increment of municipal local option gross receipts tax and distributed to the City from the Revenue Division of the New Mexico Taxation and Revenue Department, which tax is imposed pursuant to Section 7-19D-1 through Section 7-19D-9 and Ordinance No. 772, adopted on September 11, 2007, at a rate of 0.25% on any person engaging in business in the City for the privilege of engaging in business in the City (the "Pledged Tax Revenues"), and (b) any other gross receipts tax revenues received by the City, whether from distribution by the State or pursuant to gross receipts taxes imposed by the City, and hereafter pledged to the payment of Parity Bonds by affirmative act of the Council. Additionally, there are pledged to secure the payment of the principal and interest on the Bonds in accordance with their terms certain amounts held under the Bond Ordinance (except for amounts held in the Rebate Fund), subject only to the provisions of the Bond Ordinance permitting the application thereof for the purposes and on the terms and conditions set forth therein.

THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL, CHARTER OR STATUTORY PROVISION OR LIMITATION, NOR WILL THEY BE CONSIDERED OR HELD TO BE GENERAL OBLIGATIONS OF THE CITY. NEITHER THE FULL FAITH AND CREDIT NOR THE AD VALOREM TAXING POWER OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION OR PUBLIC AGENCY THEREOF, ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS. NO OWNER HAS THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY OR THE FORFEITURE OF ANY OF ITS PROPERTY IN CONNECTION WITH ANY DEFAULT UNDER THE BOND ORDINANCE.

The Pledged Revenues will be received and held by the City for the benefit of the Owners of the outstanding Parity Bonds. The Pledged Revenues will be disbursed, allocated and applied solely for the uses and purposes described herein and in the Bond Ordinance. Amounts on deposit in each of the funds and accounts established pursuant to the Bond Ordinance will be invested in Permitted Investments. Investment income on amounts in any fund or account will be credited to such fund or account, and any loss will be charged to such fund or account.

Net Revenues

All Net Revenues are irrevocably pledged by the City to secure the punctual payment of the principal of, redemption premium, if any, and interest on the outstanding Parity Bonds in accordance with their terms, and the Net Revenues will not be used for any other purpose while any of the Parity Bonds remain outstanding except as permitted by the provisions of the Bond Ordinance.

The pledge of the Net Revenues will constitute a first lien (but not necessarily an exclusive first lien), on the Net Revenues on a parity thereon with the lien of any other Parity Bonds. Such pledge of the Net Revenues and the pledge of the amounts in funds created under the Bond Ordinance will be valid and binding from and after the delivery of the Bonds without any physical delivery thereof or further act.

The City charges all customers for services rendered by the System. The City is granted by statute a lien upon each lot or parcel of land in the City for the charges imposed for water and wastewater facilities and services supplied by the System to the owner thereof (except as otherwise provided in

Section 3-23-6 NMSA 1978, as amended from time to time). The City has expressly covenanted to cause each such lien to be perfected in accordance with the provisions of Sections 3-23-6 and 3-36-1 through 3-36-5 NMSA 1978, as amended from time to time, and has agreed that it will take all reasonable steps necessary to enforce such lien as to each property the owner of which shall be delinquent for more than six months in payment of charges imposed for services rendered by the System.

The Net Revenues pledged to the payment of the outstanding Parity Bonds will be applied to the Bonds and other Parity Bonds, without priority or distinction of one over the other. The pledge of the Net Revenues will be irrevocable until all Bonds are no longer outstanding. Other than the Series 2010 Bonds, which will be defeased on the date of issuance of the Bonds, there are no outstanding obligations secured by the Net Revenues.

Rate Covenant

The City will covenant that it will at all times fix rates and collect charges for each class of service rendered by the System, and to, from time to time, amend or adjust such rates so that Gross Revenues will always be sufficient to provide for the payment of the expenses of administration, Operation and Maintenance Expenses, other expenses which may be necessary to preserve the System in good repair and working order, including the necessary reserves therefor and all other payments necessary to meet ongoing legal obligations to be paid at that time.

The City will further covenant that it will at all times fix, charge and collect such rates and charges as required in order that in each Fiscal Year the Pledged Revenues will at least equal 120% of the debt service requirements on the outstanding Parity Bonds in such Fiscal Year.

Failure by the City to comply with the foregoing Rate Covenant in any Fiscal Year will not constitute an event of default under the Bond Ordinance so long as the City, within 180 days after the end of any such Fiscal Year, adopts the schedule of rates and charges recommended or approved by a Consulting Engineer or City staff which would bring the City into compliance with the Rate Covenant. The City is also required under the Bond Ordinance in each Fiscal Year to complete a review of its financial condition for the purpose of estimating whether the Pledged Revenues for such Fiscal Year and for the next succeeding Fiscal Year will be sufficient to comply with the Rate Covenant. If the City determines that the Pledged Revenues may not be so sufficient, it will forthwith cause the Consulting Engineer or City staff to make a study for the purpose of recommending a schedule of fees, rates and charges for the System which, in the opinion of the Consulting Engineer or City staff, will cause sufficient Gross Revenues, together with the Pledged Tax Revenues, to be collected in such Fiscal Year to comply with the Rate Covenant and will cause additional Gross Revenues, together with the Pledged Tax Revenues, to be collected in such Fiscal Year sufficient to eliminate the amount of any deficiency at the earliest practicable time within such Fiscal Year. The City will as promptly as practicable adopt and place in effect the schedule of fees, rates and charges recommended or approved by the Consulting Engineer or City staff pursuant to the Bond Ordinance. In the alternative of establishing fees, rates and charges necessary to meet the Rate Covenant, the City may implement reductions in Operation and Maintenance Expenses in an amount sufficient to meet the Rate Covenant.

Pledged Tax Revenues

All Pledged Tax Revenues are irrevocably pledged by the City to secure the punctual payment of the principal of, premium, if any, and interest on the outstanding Parity Bonds in accordance with their terms, and the Pledged Tax Revenues will not be used for any other purpose while any of the Bonds remain outstanding except as permitted by the provisions of the Bond Ordinance.

The pledge of the Pledged Tax Revenues will constitute a first lien (but not necessarily an exclusive first lien) on the Pledged Tax Revenues on parity thereon with the lien of any other Parity Bonds. Such pledge of the Pledged Tax Revenues and the pledge of the amounts in funds created under the Bond Ordinance will be valid and binding from and after the delivery of the Bonds without any physical delivery thereof or further act.

The Pledged Tax Revenues pledged to the payment of the outstanding Parity Bonds will be applied to the Bonds and other Parity Bonds, without priority or distinction of one over the other. The pledge of the Pledged Tax Revenues to the Bonds will be irrevocable until all Bonds are no longer outstanding. Other than the Series 2010 Bonds, which will be defeased on the date of issuance of the Bonds, there are no outstanding obligations secured by the Pledged Tax Revenues.

Reserve Fund

The Bond Ordinance establishes a Reserve Fund for the Bonds (the “Reserve Fund”). At the time of issuance of the Bonds, proceeds of the Bonds or a debt service reserve fund insurance policy in an amount equal to the Reserve Fund Requirement (\$_____) will be deposited into the Reserve Fund.

If the amounts on deposit in the Debt Service Fund on a payment date for the Bonds and available Pledged Revenues are not enough to pay the amount becoming due on the Bonds on that date, an amount equal to the deficiency will be transferred from the Reserve Fund to the Debt Service Fund.

THE NET REVENUES

Historical Water and Wastewater System Net Revenues

The following is a five-year history of the Net Revenues of the Water and Wastewater System. Revenues of the Water and Wastewater System fluctuate based on a number of variables, including local and national economic conditions and oil and gas prices. Fluctuating energy prices and production of oil and gas within Eddy County and related activities in the City may cause fluctuations in water consumption and wastewater discharge.

Table 1

| <u>Fiscal Year Ending</u> <u>6/30</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> | <u>2017</u> | <u>2018</u> |
|--|--------------------|--------------------|--------------------|------------------|------------------|
| Operating Revenues | \$4,610,396 | \$7,348,838 | \$4,195,180 | \$3,989,092 | \$3,939,425 |
| Operating Expenses | 4,270,225 | 3,997,762 | 4,964,906 | 5,689,835 | 5,108,056 |
| Net Operating Revenues | 340,171 | 3,351,076 | (769,726) | (1,700,743) | (1,168,631) |
| Depreciation | 1,655,761 | 1,635,194 | 1,883,105 | 1,979,740 | 2,054,350 |
| Interest Income | 31,822 | 35,073 | 42,897 | 35,042 | 38,252 |
| NET REVENUES | \$2,027,754 | \$5,021,343 | \$1,156,276 | \$314,039 | \$923,971 |

Historical Water and Wastewater System Revenues and Expenditures

The following is a five-year history of Water and Wastewater System Revenues and Expenditures.

Table 2
Fiscal Years Ending June 30

| | 2014 | 2015 | 2016 | 2017 | 2018 |
|---|---------------------|---------------------|----------------------|----------------------|----------------------|
| Operating Revenues: | | | | | |
| Charges for Services | \$4,610,396 | \$7,348,838 | \$4,195,180 | \$3,989,092 | \$3,939,425 |
| Total Operating Revenues | \$4,610,396 | \$7,348,838 | \$4,195,180 | \$3,989,092 | \$3,939,425 |
| Operating Expenses: | | | | | |
| Personnel Services | \$1,353,333 | \$1,391,215 | \$1,495,569 | \$2,089,159 | \$1,514,685 |
| Contractual Services | 85,903 | 66,239 | 97,647 | 101,467 | 73,578 |
| Supplies and Purchased Power | 68,582 | - | 367,261 | 297,054 | 314,765 |
| Maintenance and Materials | 235,952 | 203,659 | 389,171 | 328,643 | 355,356 |
| Utilities | 626,033 | 528,044 | 495,490 | 424,912 | 437,934 |
| Depreciation | 1,655,761 | 1,635,194 | 1,883,105 | 1,979,740 | 2,054,350 |
| Miscellaneous | 244,661 | 173,411 | 236,663 | 468,860 | 357,388 |
| Total Operating Expenses | \$4,270,225 | \$3,997,762 | \$4,964,906 | \$5,689,835 | \$5,108,056 |
| Operating income (loss) | \$340,171 | \$3,351,076 | (\$769,726) | (\$1,700,743) | (\$1,168,631) |
| Non-Operating Revenues (Expenses): | | | | | |
| Taxes | \$1,765,102 | \$209,875 | \$473,697 | \$641,539 | \$189,487 |
| Interest Income | 31,822 | 35,073 | 42,897 | 35,042 | 38,252 |
| Interest Expense | - | (2,532) | 500 | - | - |
| Loss on Disposal of Assets | - | - | - | - | (358,837) |
| Grant Revenue | - | 325,000 | - | 273,125 | 14,375 |
| Miscellaneous | - | - | - | - | - |
| Total Non-Operating Revenues | \$1,796,924 | \$567,416 | \$517,094 | \$949,706 | (\$116,723) |
| Transfers in | \$920,753 | (2,535,580) | (148,464) | \$2,394,967 | \$867,215 |
| Transfers (out) | (1,361,207) | (244,569) | (1,134,323) | (919,219) | (2,561) |
| Total Transfers | (440,454) | (2,780,149) | (1,282,787) | 1,475,748 | 864,654 |
| Net income | \$1,696,641 | \$1,138,343 | (\$1,535,419) | \$724,711 | (\$420,700) |
| Total Net Position - beginning | \$24,898,964 | \$37,746,279 | \$38,652,274 | \$37,116,855 | \$37,841,566 |
| Prior Period Adjustment | 11,150,674 | (231,934) | - | - | - |
| Total Net Position - Restated | 36,049,638 | 37,513,931 | - | - | - |
| Total Net Position - ending | \$37,746,279 | \$38,652,688 | \$37,116,855 | \$37,841,566 | \$37,420,866 |

Source: City of Artesia Audited financial statements.

Historical Water and Wastewater System Balance Sheets

Table 3

Fiscal Years Ending June 30

| | 2014 | 2015 | 2016 | 2017 | 2018 |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|
| Assets | | | | | |
| Cash and cash equivalents | \$6,615,295 | \$5,951,173 | \$5,902,430 | \$6,905,430 | \$8,034,565 |
| Receivables | | | | | |
| Taxes | - | - | - | - | - |
| Customers (net of allowance for uncollectibles) | 386,418 | 1,184,722 | 679,423 | 697,318 | 289,663 |
| Interfund Receivables | 2,694 | (327) | 407 | - | (12,181) |
| Inventory | - | - | - | - | - |
| Prepaid Insurance | - | - | - | - | - |
| Total Current Assets | \$7,004,407 | \$7,135,568 | \$6,582,260 | \$7,602,748 | \$8,312,047 |
| Capital Assets | \$50,865,705 | \$53,342,155 | \$54,078,131 | \$56,449,460 | \$56,971,879 |
| Less: Accumulated Depreciation | (19,805,862) | (21,441,056) | (23,323,057) | (25,283,460) | (26,899,232) |
| Total Noncurrent Assets | 31,059,843 | 31,901,099 | 30,755,074 | 31,166,000 | 30,072,647 |
| Total Assets | \$38,064,250 | \$39,036,667 | \$37,337,334 | \$38,768,748 | \$60,145,294 |
| Deferred Outflow of Resources | | | | | |
| Related to Pensions | - | \$111,103 | \$194,514 | \$357,580 | \$184,691 |
| Liabilities | | | | | |
| Current Liabilities | | | | | |
| Accounts payable | \$108,814 | \$42,296 | \$1,429 | \$26,272 | \$380 |
| Accrued payroll liabilities | 37,857 | 53,126 | 35,018 | 35,295 | 24,064 |
| Other accrued liabilities | 100,567 | 102,816 | 103,138 | 111,598 | 105,540 |
| Current Portion of Landfill Liabilities | - | - | 32,764 | 34,273 | - |
| Current Portion of Accrued Compensated Abscences | 31,733 | 28,954 | - | - | - |
| Current Portion of Bonds and Notes Payable | 25,000 | 14,000 | - | - | - |
| Total Current Liabilities | \$303,971 | \$241,192 | \$172,349 | \$207,438 | \$129,984 |
| Noncurrent Liabilities | | | | | |
| Pension Liability | - | \$182,703 | \$233,620 | \$1,059,177 | \$902,488 |
| Noncurrent Portion of Bonds and Notes Payable | 14,000 | - | - | - | - |
| Noncurrent Portion of Landfill Liabilities | - | - | - | - | - |
| Total Non-Current Liabilities | 14,000 | 182,703 | 233,620 | 1,059,177 | 902,488 |
| Total Liabilities | \$317,971 | \$423,895 | \$405,969 | \$1,266,615 | \$1,804,976 |
| Deferred Inflow of Resources | | | | | |
| Related to Pensions | - | \$71,601 | \$9,024 | \$18,147 | \$88,406 |
| Net Position | | | | | |
| Net Investment in Capital Assets | \$31,020,843 | \$31,767,931 | \$30,602,696 | \$30,441,364 | \$29,419,940 |
| Restricted | - | - | - | - | - |
| Unrestricted | 6,725,436 | 6,884,343 | 6,514,159 | 7,400,202 | 8,000,926 |
| Total Net Position | \$37,746,279 | \$38,652,274 | \$37,116,855 | \$37,841,566 | \$37,420,866 |

Source: City of Artesia Audited financial statements.

THE SYSTEM

The City currently owns and operates three public utilities for its own account: water, wastewater and solid waste. The City Council sets rates and establishes policies for the System and governs the operation and management of the System.

The term “System” as used in this Official Statement refers to the joint water and wastewater system, the Net Revenues of which are pledged pursuant to the Bond Ordinance to secure the Bonds and any Parity Obligations, as described under “SECURITY AND SOURCES OF PAYMENT” above. The term “System” does not include the solid waste utility.

The System is defined in the Bond Ordinance as the municipally owned public utility designated as the City water system and wastewater system, consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the City through purchase, construction or otherwise and used in connection with the water system and wastewater system of the City and in any way appertaining thereto whether situated within or without the limits of the City.

Utility Management

The day-to-day management of the System is under the direction of the Infrastructure Director. The Director is selected by the Mayor, with the consent of the City Council, from qualified candidates that are identified through a selection committee process.

The design and construction of development and rehabilitation projects and all capital improvements for the System are under the supervision of the Infrastructure Director. The day-to-day management of the portion of the System consisting of the water utility is under the direction of the Water Department Superintendent, and the day-to-day management of the portion of the System consisting of the wastewater utility is under the direction of the Wastewater Department Superintendent.

The Infrastructure Department is responsible for the day-to-day operations of the Waste Water Treatment Plant, the Water Department, Streets, Solid Waste, Facilities Maintenance, Cemetery and Parks. The responsibilities include system expansions, budgeting, staffing, personnel evaluations, contracts, engineering negotiations, as well as, project management for Municipal Projects ranging anywhere from small projects to projects costing several million dollars. The present management for the Infrastructure Department is as follows:

Byron Landfair, Infrastructure Director. Mr. Landfair has been the Utility Infrastructure Director for the past 8 years. During that time he has managed over \$25,000,000 in water, wastewater and storm drainage projects. Before joining the City, Mr. Landfair was the owner of a construction company for 12 years and project manager for a large construction company for 6 years.

Patsy Hernandez, Wastewater Superintendent. Ms. Hernandez has been with the City for 16 years, two of them as Wastewater Supervisor.

Jennifer Estrada, Water Superintendent. Ms. Estrada has been with the City as Water Supervisor since 2010 and holds a Level IV State Water Certification. Before joining the City, Ms. Estrada was the manager of a water treatment plant in Georgia for 10 years.

Employees

As of January 1, 2019, the Joint Utilities Department employed 21 full-time employees, 11 of whom work for the Water Department, 8 for the Wastewater Department, 1 in the Office of the Infrastructure Director and 1 GIS employee. The City believes that its relationship with the employees of the Joint Utilities Department is good.

Budgeting

The budget for the Joint Utilities Fund for the System is prepared on a basis consistent with generally accepted accounting principles, using an estimate of the anticipated revenues and expenditures. An annual appropriated budget is adopted for the Joint Utilities Fund. All unexpended appropriations lapse at the end of the fiscal year. The New Mexico Department of Finance and Administration allows GAAP budgeting to the extent cash and investments required for operations are available.

New Mexico law prohibits a municipality from making an expenditure in excess of approved appropriations. If a fund (such as the Joint Utilities Fund) is not overspent, it is in compliance with State law. The adopted budget may be amended by the City Council of the City. New Mexico Department of Finance and Administration approval must be obtained for budget increases and budget transfers between funds.

The accrual basis of accounting is followed in the Joint Utilities Fund. Revenues are recognized in the accounting period in which earned; expenses are recorded in the period in which they are incurred.

Accounting and Auditing

The New Mexico Audit Act (being Sections 12-6-1 through 12-6-14, NMSA 1978) provides that the financial affairs of all municipalities (among others) in the State of New Mexico must be thoroughly examined and audited annually in accordance with generally accepted auditing standards by the New Mexico State Auditor or his staff or by independent auditors approved by the State Auditor. The State Auditor may also cause the financial affairs and transactions of any municipality to be audited in whole or in part.

Enforcement of Rates and Charges

New Mexico law provides that any charge imposed by ordinance for service rendered by a municipal utility (such as the System) will be (1) payable by the owner, personally, at the time the charge accrues and becomes payable and (2) a lien upon the tract or parcel of land being served from such time. Once the lien is filed in accordance with New Mexico law, it is a first and prior lien on the property subject only to the lien of general State and county taxes. The lien may be enforced in the manner provided by New Mexico law, including foreclosure against real estate in the same manner that mortgages or other liens against real estate are foreclosed, with like rights of redemption, and foreclosure against personal property in the same manner that security interests are foreclosed. The proceeds of sale of property pursuant to a foreclosure sale are applied in the manner required by New Mexico law. The City has covenanted in the Bond Ordinance to cause each lien to be perfected in accordance with New Mexico law and to take all reasonable steps necessary to enforce the lien against any parcel of property the owner of which is delinquent for more than six months in the payment of charges imposed for the use of the System.

New Mexico law provides that if payment of any fee or other charge for water or wastewater service is not made within 30 days from the date of the payment is due, the water service may be discontinued and will not be again supplied to the person liable for the payment until the arrears with interest and penalties have been fully paid.

Connection, Billing and Collection Procedures

Connection Requirement

In accordance with New Mexico law, the City is authorized to require the owner, agent or occupant of a building on a lot or land adjoining a street in which a sanitary sewer exists to connect the building to the sanitary sewer. City ordinances require owners or occupants within the City to connect to the City wastewater system if the property is capable of being served by the wastewater system. The City actively enforces this connection policy.

Billing Procedures

The City sends a single, combined monthly bill to each of the customers of the System which includes services for water, wastewater and solid waste. The bill separately identifies the charges attributable to each of the water, wastewater and solid waste services provided during the preceding period and the total amount due for such services.

Collection Procedures

In the event a billing for water, wastewater or solid waste is not paid within fourteen (14) days after the date billed, it shall be delinquent. In the event any billing for water, wastewater and solid waste services has not been paid within thirty (30) days after the due date, utility service to the user shall be discontinued. A fifteen dollar (\$15.00) late fee, in addition to the past due bill shall be paid prior to restoration of utility service.

Whenever any person shall fail or refuse to pay the charges for utility services established by the City, the City Council may make an assessment against the property where the services were furnished in the amount of the delinquency. The City Clerk shall prepare an assessment roll on or before June 30 of each year showing the name of the owner of the property, a description of the property, the amount and period of the unpaid charge for the fiscal year in which the delinquency occurred, and in such case, after the assessment roll is prepared and filed with and by the City Clerk, the City Clerk shall give ten (10) days' notice by one publication in a newspaper of general circulation in the city, which notice shall state the property against which the assessment has been made and shall state a time at which the City Council will meet to hear the appeals or protests of parties aggrieved by such assessment.

At the time fixed for such protest meeting, the City Council shall meet, hear and determine upon all appeals, protests and objections which may be made by any interested party, and the City Council shall correct any error which may have been found in the assessments and, if the proceedings are found to be regular, shall thereupon, by resolution, declare the confirmation of such proceedings, and the proceedings and assessments so confirmed shall thereafter be deemed the final determination of the regularity, validity and correctness of the assessments.

On or before October 1 of each year, the City Clerk shall certify to the City Council a statement of all delinquent assessments describing the land affected, after which the assessment shall be a lien upon each lot or parcel of land described in such confirmed assessment roll. It shall be the duty of the City Clerk to make out, sign, attest and file for record in the office of the County Clerk a claim of lien therefor,

which lien shall bear interest and be subject to foreclosure and collection of reasonable attorney fees as allowed by law.

Insurance

The City has covenanted in the Bond Ordinance to carry fire and extended coverage insurance and other types of insurance in such amounts and to such extent as is normally carried by municipal corporations operating public utilities of the same type, including but not limited to self-insurance and self-insurance pools. The cost of such insurance shall be considered an operating cost of the System.

The City maintains qualified self-insurance programs that the City expects will satisfy the insurance covenant contained in the Bond Ordinance.

Water Utility

Existing Water Utility

The service area of the water utility consists of all the land area within the City limits. The water utility had approximately 4,900 connections as of January 1, 2019. Total average monthly water consumption in 2019 equals approximately 162,030,761 gallons. See “Water Consumption” below.

Water Supply

Water is extremely important, particularly in the arid climate of southeastern New Mexico where the City is located. A reliable supply of good quality water in sufficient quantities is essential to the long-term viability, growth and development of the City.

The City relies entirely upon ground water obtained from eight wells for its municipal water supply. The City’s wells tap the Roswell Artesian Groundwater Basin, which is a regional “basin-fill” aquifer that contains large quantities of fresh water. Water in the City’s wells rises to within 200 feet of the top of the well hole. The water levels in the aquifer fluctuate over time, based on the demand for water and the precipitation over the basin watershed. The Roswell Artesian Groundwater Basin is replenished by Pecos River stream flow and groundwater inflow. The quality of the City’s ground water supply is reported as generally good although the water supply at times has heightened levels of manganese and iron which results in complaints regarding taste and color.

To meet water demands, the City either increases ground water pumping or drills new wells. At present, the City has declared municipal water rights of 7,560.795 acre-feet per year. The City believes it has sufficient water rights to meet anticipated need, but is continuously alert to acquire additional water rights and works cooperatively with other governmental entities in the Pecos River Valley (including the New Mexico Interstate Stream Commission) to assure the City’s future firm supply of quality water resources in sufficient quantities to accommodate the City’s projected needs.

The City’s ability to acquire water rights is affected by several factors, including the validity, price and marketplace availability of water rights.

Water Storage and Distribution Facilities

The municipal water system includes four (4) reservoirs ranging from 800,000 gallons to two million gallons in capacity. The reservoir capacity totals 5.5 million gallons. All reservoirs are above

ground level, are of steel or concrete construction and are in good condition. Construction of an additional 400,000 gallon reservoir is scheduled to begin July 1, 2019.

The municipal water distribution system contains approximately 115 miles of transmission and distribution lines as of January 1, 2019. The water distribution system consists of cast iron, asbestos cement, concrete cylinder, and PVC plastic water mains, ranging between 2” and 18” diameter in size. The City considers the water transmission and distribution systems to be in good condition and of adequate size to serve system demand including fire flows.

Water Utility Customers

As of January 1, 2019, there were approximately 4,900 residential and commercial customers of the municipal water utility. The following is a list of the 10 largest users of the water utility (based on percentage of total water utility revenues) for the City’s fiscal year ended June 30, 2018, according to the City’s records. Total water utility revenues for the City’s fiscal year ended June 30, 2018 were approximately \$2,750,248. The 10 largest users of the water utility accounted for approximately 36% of the total water utility revenues.

Table 4

| <u>NAME</u> | <u>ANNUAL WATER REVENUES</u> |
|---|------------------------------|
| Navajo | \$702,284 |
| Federal Law Enforcement Training Center | 83,750 |
| Canyonstone Apartments | 12,970 |
| Housing Project NM21 | 44,091 |
| Morningside Water | 40,110 |
| ABO Apartments | 20,345 |
| Country Club Estates | 11,382 |
| Navajo Refining | 21,455 |
| Artesia General Hospital | 25,595 |
| Robert & Paulin Amador | 20,206 |

Source: City of Artesia

Required Permits

The New Mexico State Engineer’s Office (“NMSEO”) has jurisdiction over ground water in the City. All wells in the City require a permit from the NMSEO. The City has established water rights totaling 7,560.795 acre-feet per year. The City has not been subject to any permit conditions or other limitations that restrict the use of its established water rights.

The City believes that it is in compliance with all permits that it holds relating to the operations of the water utility.

Water Consumption

The following table indicates historical annual water system consumption.

Table 5

| <u>Fiscal Year</u> | <u>Total Water Consumption*</u> |
|--------------------|---------------------------------|
| 2018 | 1,989,406 |
| 2017 | 2,385,002 |
| 2016 | 1,949,742 |
| 2015 | 1,830,700 |
| 2014 | 1,643,106 |
| 2013 | 2,962,214 |
| 2012 | 1,940,644 |
| 2011 | 1,777,606 |
| 2010 | 1,627,068 |
| 2009 | 1,647,602 |

Source: City of Artesia

* In thousands of gallons.

Peak day consumption usually occurs in June or July. The estimated annual per capita water consumption is currently approximately 160,294 gallons. The City has implemented a water conservation program. The program has not resulted in a material reduction in water consumption.

Wastewater Utility

Existing Wastewater Utility

The City's wastewater utility provides service to approximately 97% of the households in the City, the balance being served by septic tanks. The wastewater utility has approximately 4,359 connections as of June 30, 2018.

The collection system consists of approximately 42.4 miles of collection lines of primarily clay and plastic construction. The wastewater collection system includes seven lift stations. The collection system is primarily constructed of clay pipe, with concrete, brick and block manholes. Sewers constructed in the past 20 years are polyvinyl chloride (PVC) pipe.

Wastewater Treatment Facility

The City has a single wastewater treatment facility (“WWTF”) for treating all wastewater collected within its service area. The WWTF was originally constructed in 1960, and the last major expansion and renovation was completed in 2011. The biological treatment processes consist of a grit chamber, extended aeration, followed by a final clarifier. Waste sludge-handling facilities include an aerobic digester and sludge-drying beds. After treatment, the sludge is included in a composting operation, then spread as fertilizer on portions of the City park system or nearby farms and orchards. The existing system remains adequate for existing flows. The average daily flow into the WWTF is now approximately 1.7 million gallons per day. This is an increase from an average flow of approximately 850,000 gallons per day in 1992 and is likely due to continued residential developments and the Federal Law Enforcement Training Center.

Required Permits

In order to operate the WWTF, the City is required to have a National Pollutant Discharge Elimination System (“NPDES”) permit, which is issued by the United States Environmental Protection Agency, Region 6, in Dallas, Texas. Such permits are designed to implement and assure compliance with federal and State effluent limitations and water quality standards. NPDES permits are issued for a term of no more than 5 years, and renewals are conditioned upon compliance with the requirements of the existing permit and the then currently applicable limitations and water quality standards. Violation of the water quality standards set forth in an NPDES permit may be grounds for injunctive sanctions, criminal and civil penalties and revocation of the permit. The NPDES permit for the WWTF expires in 2019. The City has applied for a renewal permit and expects the permit to be issued in the near future.

At some future date, the City may experience a stringent numeric limit for ammonia that will require treatment far more advanced than is now possible at the WWTF. The current NPDES permit also imposes a new effluent limit for mercury.

User Connections

The following table indicates the historical wastewater connections and daily flows.

Table 6

| Fiscal Year Ended June 30 | Effluent Process (Mgd)* | Monthly Peak Flow (Mgd)** | Average Discharge (Mgd)** | Average Number Of Customers |
|--|--|--|--|--|
| 2018 | 462.6 | 40.8 | 35.5 | 4,359 |
| 2017 | 438.3 | 40.6 | 33.7 | 3,947 |
| 2016 | 549.9 | 49.1 | 42.3 | 4,329 |
| 2015 | 517.8 | 49.1 | 43.1 | 4,375 |
| 2014 | 536.7 | 47.2 | 44.7 | 4,275 |

* In million gallons.

** In million gallons per day.

Source: City of Artesia

Environmental Matters

The wastewater utility is subject to the rules and regulations promulgated by the New Mexico Environmental Improvement Board as to its treatment of liquid and solid wastes and to standards of the New Mexico Water Quality Control Act. The wastewater utility is also subject to numerous federal laws concerning pollution and effluent control as well as environmental regulations promulgated by the United States Environmental Protection Agency. The City believes it is currently in compliance with all applicable rules and regulations.

Major Wastewater Utility Customers

The following is a list of the 10 largest customers of the wastewater utility (based on percentage of total wastewater utility revenues) for the City’s fiscal year ended June 30, 2018, according to the City’s utility records. Total wastewater utility revenues for the City’s fiscal year ended June 30, 2018 were approximately \$1,548,000. The 10 largest customers of the wastewater utility accounted for approximately 64% of total wastewater utility revenues.

Table 7

| <u>Name</u> | <u>Annual Wastewater Revenues</u> |
|---|-----------------------------------|
| Navajo Refining Co. | \$299,284 |
| Artesia Public Schools | 111,974 |
| Federal Law Enforcement Training Center | 110,802 |
| Housing Project NM21 | 107,153 |
| Canyonstone Apartments | 103,905 |
| Morningside | 71,079 |
| ABO Apartments | 52,779 |
| Country Club Estates | 43,200 |
| Artesia General Hospital | 37,753 |
| Artesia Health Facilities | 31,876 |

Source: City of Artesia

Capital Improvement Plan

The City has developed a capital improvement plan for the water utility and the wastewater utility. The plan includes a prioritized list of projects for the water utility which includes a \$1,600,000 water tower project. Water distribution and wastewater collection lines are replaced on an ongoing basis at a cost of \$750,000 per year.

Rates and Charges

The City collects a monthly fee for water and wastewater service. The most recent adjustment to water and wastewater charges was approved by Ordinance No. 1022 adopted on February 13, 2018. The City reviews water and wastewater charges annually.

The water and sewer rates as shown on the following tables are effective for the May 2018 billing cycle and thereafter:

Table 8

Water Rates

| <u>Domestic Users Inside</u> | <u>Base Rate (For 7,000 Gallons)</u> | <u>Per 1,000 Gallons Over Base</u> |
|------------------------------|--|--|
| First 5,000 Gallons | \$8.45 | \$0.00 |
| 5,001 – 10,000 | 8.45 | 1.57 |
| 10,001 – 25,000 | 16.32 | 1.66 |
| 25,001 – 50,000 | 41.24 | 1.75 |
| 50,001 – 100,000 | 84.92 | 1.84 |
| 100,001 – 999,999+ | 176.67 | 1.97 |

| <u>Domestic Users Outside</u> | <u>Base Rate (For 6,000 Gallons)</u> | <u>Per 1,000 Gallons Over Base</u> |
|-------------------------------|--|--|
| First 6,000 gallons | \$18.30 | \$0.00 |
| 6,001 – 10,000 | 18.30 | 1.57 |
| 10,001 – 25,000 | 28.79 | 1.66 |
| 25,001 – 50,000 | 69.44 | 1.75 |
| 50,001 – 100,000 | 138.99 | 1.84 |
| 100,001 – 999,999+ | 287.69 | 1.97 |

| <u>Domestic Users Outside With 2 Dwellings On 1 Meter</u> | <u>Base Rate (For 12,000 Gallons)</u> | <u>Per 1,000 Gallons Over Base</u> |
|---|---|--|
| First 12,000 gallons | \$34.44 | \$0.00 |
| 12,001 – 20,000 | 34.44 | 2.62 |
| 20,001 – 50,000 | 55.42 | 2.71 |
| 50,001 – 100,000 | 136.72 | 2.88 |
| 100,001 – 200,000 | 280.92 | 2.97 |
| 200,001 – 999,999+ | 578.32 | 3.99 |

| <u>Domestic Users Outside With 3 Dwellings on 1 Meter</u> | <u>Base Rate (For 18,000 Gallons)</u> | <u>Per 1,000 Gallons Over Base</u> |
|---|---|--|
| First 18,000 gallons | \$50.58 | \$0.00 |
| 18,001 – 30,000 | 50.58 | 2.62 |
| 30,001 – 75,000 | 82.04 | 2.71 |
| 75,001 – 150,000 | 203.99 | 2.88 |
| 150,001 – 300,000 | 420.29 | 2.97 |
| 300,001 – 1,500,000 | 866.39 | 3.99 |

| <u>Domestic Users Outside With 4 Dwellings On 1 Meter</u> | <u>Base Rate (For 24,000 Gallons)</u> | <u>Per 1,000 Gallons Over Base</u> |
|---|---|--|
| First 24,000 gallons | \$70.10 | \$0.00 |
| 24,001 – 40,000 | 70.10 | 2.62 |
| 40,001 – 100,000 | 112.05 | 2.71 |
| 100,001 – 200,000 | 271.47 | 2.88 |
| 200,001 – 400,000 | 544.17 | 2.97 |
| 400,001 – 2,000,000 | 1127.17 | 3.99 |

| <u>Commercial Users Inside</u> | <u>Base Rate (For 7,000 Gallons)</u> | <u>Per 1,000 Gallons Over Base</u> |
|--------------------------------|--|--|
| First 7,000 gallons | \$21.52 | \$0.00 |
| 7,001 – 10,000 | 21.52 | 1.84 |
| 10,001 – 25,000 | 27.02 | 1.92 |
| 25,001 – 50,000 | 55.85 | 2.10 |
| 50,001 – 100,000 | 108.30 | 2.27 |
| 100,001 – 500,000 | 221.90 | 2.96 |

| <u>Commercial Users Outside</u> | <u>Base Rate (For 6,000 Gallons)</u> | <u>Per 1,000 Gallons Over Base</u> |
|---------------------------------|--|--|
| First 6,000 gallons | \$26.36 | \$0.00 |
| 6,001 -10,000 | 26.36 | 2.27 |
| 10,001 – 25,000 | 35.45 | 2.45 |
| 25,001 – 50,000 | 72.15 | 2.62 |
| 50,001 – 100,000 | 137.70 | 2.80 |
| 100,001 – 500,000 | 277.50 | 4.11 |

| <u>Morningside Users</u> | <u>Base Rate (For 7,000 Gallons)</u> | <u>Per 1,000 Gallons Over Base</u> |
|--------------------------|--|--|
| First 7,000 gallons | \$11.83 | \$0.00 |
| 7,001 – 10,000 | 11.83 | 1.57 |
| 10,001 – 25,000 | 16.55 | 1.66 |
| 25,001 - 50,000 | 41.47 | 1.75 |
| 50,001 – 100,000 | 85.15 | 1.84 |
| 100,001 – 999,999+ | 176.90 | 2.97 |

| <u>Transport</u> | <u>Base Rate (For 6,000 Gallons)</u> | <u>Per 1,000 Gallons Over Base</u> |
|---------------------|--|--|
| First 6,000 gallons | \$21.50 | \$0.00 |
| 6,001 -10,000 | 21.50 | 2.10 |
| 10,001 – 25,000 | 29.89 | 2.27 |
| 25,001 – 50,000 | 63.97 | 2.45 |
| 50,001 – 100,000 | 125.15 | 2.62 |
| 100,001 – 500,000 | 256.25 | 3.93 |

| <u>FLETC</u> | <u>Base Rate (For 7,000 Gallons)</u> | <u>Per 1,000 Gallons Over Base</u> |
|---------------------|--|--|
| First 7,000 gallons | \$15.28 | \$0.00 |
| 7,001 – 10,000 | 15.28 | 1.52 |
| 10,001 – 25,000 | 20.24 | 1.66 |
| 25,001 - 50,000 | 46.00 | 1.78 |
| 50,001 – 100,000 | 92.40 | 1.91 |
| 100,001 – 500,000 | 191.09 | 2.16 |
| 500,001 – 999,999+ | 1104.92 | 2.16 |

Source: City of Artesia

Wastewater Rates

| | <u>Base Rate</u> | <u>Per 1,000 Gallons Over Base</u> |
|---|------------------|--|
| Domestic and commercial users inside: First 7,000 gallons | \$13.48 | \$2.71 |
| Domestic and commercial users outside: First 6,000 gallons | 15.10 | 2.85 |
| Morningside users | 9.41 | 1.76 |
| Navajo refining use: First 7,000 gallons | 7.00 | 1.55 |

Source: City of Artesia

INFORMATION CONCERNING THE MUNICIPAL GROSS RECEIPTS TAX AND REVENUES

As security for its obligations to pay the principal of and interest on the Bonds, the City has pledged revenues from the Municipal Gross Receipts Tax described below.

Municipal Gross Receipts Tax

Authority for Imposition of the Municipal Gross Receipts Tax. The Municipal Local Option Gross Receipts Taxes Act authorizes municipalities to impose by ordinance an excise tax (“Municipal Gross Receipts Tax”) not to exceed one and one-half percent of the gross receipts of any person engaging in business in the municipality. An election of the registered electors of a municipality is not required unless the municipality chooses to submit the ordinance to its registered electors or unless a petition is filed requesting such an election. The ordinance imposing or amending any Municipal Local Option Gross Receipts Tax becomes effective either July 1 or January 1, whichever date occurs first after the expiration of three months from the date of ordinance is enacted or the date the results of the election are certified.

The City adopted Municipal Gross Receipts Tax Ordinance 772, as amended, which imposed upon persons engaging in business in the City two Municipal Gross Receipts Tax increments totaling 0.25% of the gross receipts reported or required to be reported pursuant to the Gross Receipts and Compensating Tax Act. No referendum election was held for the sixth increment of Municipal Gross Receipts Tax as imposed. The Municipal Gross Receipts Tax revenues pledged toward repayment of the Bonds are from the sixth increment, in the total amount of 0.25%, not to exceed a maximum of \$1,000,000 annually (the “Pledged Tax Revenues”).

Description of Municipal Gross Receipts Tax. Any municipal ordinance imposing a Municipal Gross Receipts Tax is required to adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act, Sections 7-9-1 through 7-9-113 NMSA 1978, as amended. In addition, a Municipal Gross Receipts Tax may not be imposed on the gross receipts arising from: (1) transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or (2) a business located outside the boundaries of a municipality on land owned by that municipality for which a gross receipts tax is made pursuant to the Gross Receipts and Compensating Tax Act.

Taxed Activities. For the privilege of engaging in business in the State of New Mexico, the Municipal Gross Receipts Tax is imposed upon any person engaging in business in the State. “Gross Receipts” is defined in the Gross Receipts and Compensating Tax Act as the total amount of money or value or other consideration received from selling property in the State of New Mexico (including tangible personal property handled on consignment in the State), from leasing property employed in the State of New Mexico, from performing services in the State of New Mexico and from selling services outside New Mexico, the product of which is initially used in New Mexico. The definition excludes cash discounts allowed and taken, the Municipal Gross Receipts Tax payable on transactions for the reporting period and any county sales tax, county fire protection excise tax, county gross receipts taxes, any time of time-price differential and certain gross receipts or sales taxes imposed by an Indian tribe or pueblo.

Legislative Changes. Revisions to laws of the State affecting taxed activities and distributions of gross receipts tax revenues could be adopted in the future by the State Legislature. Proposals affecting taxed activities and distributions are frequently considered by the State Legislature. There is no assurance that any future revisions to State laws will not adversely affect activities now subject to the gross receipts

tax or distribution of gross receipts tax revenues to the City. See “SPECIAL FACTORS – Legislative Changes” herein.

Exemptions. Some activities and industries are exempt from the Municipal Gross Receipts Tax, many by virtue of their taxation under other laws. Exemptions include, but are not limited to, certain receipts of governmental agencies and certain organizations, receipts from the sale of vehicles, occasional sales of property or services, wages, certain agricultural products, dividends, and interest and receipts from the sale of or leasing of natural gas, oil or mineral interests. Various deductions are allowed including but not limited to receipts from various types of sales and leases of tangible personal property or services, receipts from sales to governmental agencies or certain organizations, receipts from processing certain agricultural products, receipts from certain publication sales, certain receipts from interstate commerce transactions, receipts from retail sales of food (not including restaurant sales and certain sales of prepared foods), and receipts of licensed medical care providers from Medicare Part C. There are over fifty specified exemptions and deductions from gross receipts taxation; nevertheless, the general presumption is that all receipts of a person engaging in business in the State of New Mexico are subject to the Municipal Gross Receipts Tax.

Manner of Collection of Municipal Gross Receipts Taxes. Municipal Gross Receipts Taxes are collected by the Revenue Division in the same manner and at the same time that the Revenue Division collects the state-shared gross receipts tax. State statutes authorize the Revenue Division to deduct an amount not to exceed 3.00% of the portion of the Municipal Gross Receipts Tax arising from a Municipal Gross Receipts Tax rate in excess of 0.50% as a charge for the administrative costs of collection. Amounts deducted as administrative charges are remitted to the State treasurer for deposit in the State general fund each month. The Revenue Division currently deducts as an administrative charge 3.00% of the revenues collected from the portion of the Municipal Gross Receipts Tax less any deduction for administrative costs and less any disbursements for tax credits, refunds and the payment of interest applicable to the Municipal Gross Receipts Tax. Distribution of the Municipal Gross Receipts Tax revenues is made within the month following the month in which the taxes are collected.

Remedies for Delinquent Taxes. The Revenue Division may assess Municipal Gross Receipts Taxes to a taxpayer who has not paid the taxes due to the City. If any taxpayer to whom Municipal Gross Receipts Taxes have been assessed or upon whom demand for payment has been made does not make payment thereof (or protest the assessment or demand for payment) within 30 days after the date of assessment or demand for payment, the taxpayer becomes a delinquent taxpayer. Such taxpayer remains delinquent until payment of all the taxes due, including interest and penalties, or until security is furnished for the payment thereof. The Revenue Division may, under certain circumstances, enter into an agreement with a delinquent taxpayer to permit monthly installment payments for a period of not more than 36 months. Interest is due on any delinquent tax from the first day following the day on which it is due at the rate of 1.25% per month until paid, without regard to any installment agreement. However, if the Municipal Gross Receipts Tax is paid within 10 days after demand is made, no interest will be imposed for the period after the date of demand.

The Revenue Division may levy upon all property or rights to property of a delinquent taxpayer and sell the same in order to collect the delinquent tax. The amount of delinquent Municipal Gross Receipts Taxes is also a lien in favor of the State upon all property and rights to property of the delinquent taxpayer, which lien may be foreclosed as provided by State statutes.

Pledged Municipal Gross Receipts Tax Report

Set forth below is a history of the Pledged Tax Revenues the City has received from July 1, 2014 through June 30, 2018.

Table 9

| <u>Fiscal Year Ended June 30</u> | <u>Municipal Gross Receipts Tax Rate</u> | <u>Pledged Municipal Gross Receipts Tax Revenues</u> | <u>Percent Increase (Decrease)</u> |
|--------------------------------------|--|--|--|
| 2018 | 0.25% | \$1,497,359 | 5.95% |
| 2017 | 0.25% | 1,413,248 | (5.08%) |
| 2016 | 0.25% | 1,488,913 | (22.14%) |
| 2015 | 0.25% | 1,912,244 | 0.62% |
| 2014 | 0.25% | 1,900,369 | (4.41%) |

Source: City of Artesia

Historical Gross Receipts Tax Rates

Set forth below is a history of gross receipts tax rates in the State, Eddy County, and the City.

Table 10

| <u>As of January 1</u> | <u>State of New Mexico</u> | <u>Eddy County</u> | <u>City of Artesia</u> | <u>Total</u> |
|------------------------|----------------------------|--------------------|------------------------|--------------|
| 2019 | 5.1250% | 0.4583% | 2.3125% | 7.8958% |
| 2018 | 5.1250% | 0.4583% | 2.3125% | 7.8958% |
| 2017 | 5.1250% | 0.4583% | 2.3125% | 7.8958% |
| 2016 | 5.1250% | 0.3750% | 2.3125% | 7.8125% |
| 2015 | 5.1250% | 0.3750% | 2.3125% | 7.4375% |

Source: State of New Mexico Taxation and Revenue Department

Gross Receipts Reported by Standard Industrial Classification

The following represents total taxable gross receipts reported in the City by Standard Industrial Classification:

Table 11

Total Taxable Gross Receipts

| Classification | Fiscal Year Ended June 30 | | | | |
|--|---------------------------|------------------------|------------------------|------------------------|------------------------|
| | 2014 | 2015 | 2016 | 2017 | 2018 |
| Agriculture, Forestry, Fishing and Hunting | \$ 1,163,501 | \$ 1,235,981 | \$ 1,385,420 | \$ 1,005,748 | \$ 991,545 |
| Mining, Quarrying, and Oil and Gas Extraction | 171,453,749 | 148,495,618 | 66,683,268 | 3,765,983 | 135,371,890 |
| Utilities | 28,794,297 | 33,812,215 | 31,165,532 | 22,728,935 | 28,332,044 |
| Construction | 106,707,071 | 109,612,131 | 90,447,461 | 134,579,790 | 77,455,558 |
| Manufacturing | 78,494,295 | 59,316,727 | 16,831,697 | (20,468,526) | 22,829,443 |
| Wholesale Trade | 60,390,772 | 73,919,026 | 40,967,295 | 49,235,196 | 47,319,580 |
| Retail Trade | 136,799,930 | 143,815,328 | 120,995,572 | 121,621,927 | 146,598,672 |
| Transportation and Warehousing | (47,176,382) | 25,791,707 | 8,690,872 | 5,625,846 | 8,064,147 |
| Information and Cultural Industries | 21,246,613 | 19,560,772 | 19,265,930 | 18,147,319 | 19,283,096 |
| Finance and Insurance | 3,310,799 | 3,697,820 | 3,830,965 | 3,604,871 | 4,585,155 |
| Real Estate Rental and Leasing | 25,927,392 | 27,547,728 | 15,741,394 | 14,558,935 | 22,254,822 |
| Professional, Scientific, and Technical Services | 30,486,137 | 32,467,200 | 30,554,962 | 58,889,647 | 27,113,847 |
| Administrative, Support and Waste Management | 13,990,817 | 12,965,432 | 27,553,500 | 11,192,196 | 10,461,037 |
| Educational Services | 297,664 | 324,264 | 330,326 | 385,275 | 406,835 |
| Health Care and Social Assistance | 9,098,374 | 9,889,987 | 9,699,902 | 9,478,284 | 11,181,672 |
| Arts, Entertainment, and Recreation | 123,685 | 574,890 | 662,033 | 507,651 | 590,753 |
| Accommodation and Food Services | 33,476,670 | 40,991,322 | 36,415,824 | 35,063,420 | 43,386 |
| Other Services (except Public Administration) | 67,392,248 | 61,069,027 | 43,246,188 | 48,012,979 | 59,010,849 |
| Unclassified | 3,527,645 | 1,488,167 | 1,630,632 | 1,510,162 | 1,595,190 |
| Total Taxable | <u>\$ 745,592,937</u> | <u>\$ 806,594,074</u> | <u>\$ 566,099,993</u> | <u>\$ 519,445,638</u> | <u>\$ 666,502,617</u> |
| Total Reported | <u>\$1,398,773,394</u> | <u>\$1,288,711,106</u> | <u>\$1,014,972,234</u> | <u>\$1,156,377,955</u> | <u>\$1,310,881,462</u> |

Source: New Mexico Taxation and Revenue Department RP-80 Reports.

The revenue experience set forth above is historical, and there can be no assurance that the future revenue experience of the City will be consistent with this information.

HISTORICAL GENERAL FINANCIAL INFORMATION FOR THE CITY

The data appearing on the pages under this heading have been excerpted from the audited financial statements of the City for the years indicated. As presented, the data does not include the related "Notes to Financial Statements" which are an integral part of the audited financial statements. The audited financial statements, including the related notes, are available on request from the City.

The General Fund of the City is not pledged to pay debt service on the Bonds, and the following charts are included for information purposes only.

Historical General Fund Balance Sheet

Table 12

| | <u>2014</u> | <u>2015</u> | <u>2016</u> | <u>2017</u> | <u>2018</u> |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|
| Assets | | | | | |
| <i>Current:</i> | | | | | |
| Cash and cash equivalents | \$ 6,995,923 | \$10,208,468 | \$ 6,208,491 | \$ 5,109,349 | \$ 4,471,674 |
| Short term investments | 11,866,753 | 11,866,753 | 11,866,753 | 11,500,000 | 11,500,000 |
| Accounts receivable | | | | | |
| Taxes | 3,931,351 | 3,866,681 | 1,937,905 | 1,175,576 | 1,255,371 |
| Intergovernmental | 319,710 | 7,000 | 12,086 | 14,000 | 4,578 |
| Miscellaneous | 319,264 | 749,165 | 5,825 | 9 | - |
| Interfund receivable | 21,605 | 9,976 | 9,242 | 9,649 | 11,406 |
| <i>Total assets</i> | <u>\$23,454,606</u> | <u>\$26,708,043</u> | <u>\$20,040,302</u> | <u>\$17,808,583</u> | <u>\$17,243,029</u> |
| Liabilities and fund balances | | | | | |
| <i>Liabilities</i> | | | | | |
| Accounts payable | \$ 494,407 | \$ 431,430 | \$ 132,219 | \$ 322,261 | \$ 792,179 |
| Accrued payroll liabilities | 428,836 | 480,349 | 324,718 | 259,993 | 306,087 |
| Customer deposits payable | 3,882 | 3,277 | 3,277 | - | - |
| Other accrued liabilities | 3,483 | 3,733 | 3,666 | - | - |
| <i>Total liabilities</i> | <u>930,608</u> | <u>918,789</u> | <u>463,880</u> | <u>582,254</u> | <u>1,098,795</u> |
| <i>Fund balances</i> | | | | | |
| Committed | - | 2,149,105 | - | 1,434,953 | 1,447,229 |
| Unassigned | 22,523,998 | 23,640,149 | 19,576,422 | 15,791,376 | 14,697,005 |
| <i>Total fund balances</i> | <u>22,523,998</u> | <u>25,789,254</u> | <u>19,576,422</u> | <u>17,226,329</u> | <u>16,144,234</u> |
| <i>Total liabilities and fund balances</i> | <u>\$23,454,606</u> | <u>\$26,708,043</u> | <u>\$20,040,302</u> | <u>\$17,808,583</u> | <u>\$17,243,029</u> |

Source: City of Artesia - Audited Financial Statements for the Fiscal Years ending June 30, 2014, 2015, 2016, 2017 and 2018.

Historical General Fund Revenues and Expenditures

The General Fund is used to account for all financial resources of the City except for those required to be accounted for in one of the other funds.

Table 13

| | 2014 | 2015 | 2016 | 2017 | 2018 |
|---|---------------------|---------------------|---------------------|---------------------|---------------------|
| <i>Revenues:</i> | | | | | |
| Property taxes | \$ 654,553 | \$ 668,583 | \$ 14,924 | \$ 4,479 | \$ - |
| Gross receipts taxes | 21,379,155 | 24,926,660 | 17,125,658 | 16,203,047 | 16,724,344 |
| Other taxes | 654,796 | 710,723 | 785,429 | 538,156 | 694,249 |
| State grants | 977,668 | 59,746 | 276,431 | 291,435 | 111,705 |
| Federal grants | - | 494,500 | - | - | - |
| Licenses and fees | 128,999 | 183,803 | 150,438 | 624,842 | 345,259 |
| Charges for services | 961,750 | 1,252,057 | 1,063,775 | 934,488 | 824,846 |
| Investment Income | 28,453 | 26,145 | 22,921 | 29,062 | 25,364 |
| Miscellaneous | 79,285 | 33,220 | 879,501 | 91,032 | 302,186 |
| <i>Total Revenues</i> | <u>24,864,659</u> | <u>28,355,437</u> | <u>20,319,077</u> | <u>18,716,541</u> | <u>19,027,953</u> |
| <i>Expenditures:</i> | | | | | |
| <i>Current:</i> | | | | | |
| General government | 2,364,029 | 3,370,986 | 4,250,196 | 3,358,744 | 3,427,294 |
| Public safety | 8,910,677 | 8,672,486 | 9,966,445 | 8,828,145 | 8,993,907 |
| Culture and recreation | 1,316,661 | 1,305,829 | 1,441,742 | 1,207,599 | 1,299,008 |
| Health and welfare | 222,900 | 261,608 | 504,424 | 477,503 | 496,424 |
| Public works | 3,480,214 | 4,315,232 | 3,396,501 | 3,100,866 | 3,156,409 |
| Capital Outlay | - | 46,517 | - | - | 661 |
| <i>Total Expenditures</i> | <u>16,294,481</u> | <u>17,972,658</u> | <u>19,559,308</u> | <u>16,972,857</u> | <u>17,373,703</u> |
| <i>Excess (deficiency) of revenues over expenditures</i> | <u>8,570,178</u> | <u>10,382,779</u> | <u>759,769</u> | <u>1,743,684</u> | <u>1,654,250</u> |
| <i>Other financing sources (uses)</i> | | | | | |
| Transfers out | (10,511,205) | (7,117,523) | (6,972,601) | (3,453,385) | (2,736,345) |
| <i>Total other financing sources (uses)</i> | <u>(10,511,205)</u> | <u>(7,117,523)</u> | <u>(6,972,601)</u> | <u>(3,453,385)</u> | <u>(2,736,345)</u> |
| <i>Excess (deficiency) of revenues and other sources (uses) over expenditures</i> | <u>(1,941,027)</u> | <u>3,265,256</u> | <u>(6,212,832)</u> | <u>(1,709,701)</u> | <u>(1,082,095)</u> |
| <i>Fund balance - beginning of year</i> | 24,465,025 | 22,523,998 | 25,789,254 | 19,576,422 | 17,226,329 |
| <i>Prior period adjustment</i> | - | - | - | (640,392) | - |
| <i>Fund balance - beginning of year (restated)</i> | <u>24,465,025</u> | <u>22,523,998</u> | <u>25,789,254</u> | <u>18,936,030</u> | <u>17,226,329</u> |
| <i>Fund balance - end of the year</i> | <u>\$22,523,998</u> | <u>\$25,789,254</u> | <u>\$19,576,422</u> | <u>\$17,226,329</u> | <u>\$16,144,234</u> |

Source: City of Artesia - Audited Financial Statements for the Fiscal Years ending June 30, 2014, 2015, 2016, 2017 and 2018.

BOND INSURANCE

Bond Insurance Policy.

Concurrently with the issuance of the Bonds, Build America Mutual Assurance Company (“BAM”) will issue its Municipal Bond Insurance Policy for the Bonds (the “Policy”). The Policy guarantees the scheduled payment of principal of and interest on the Bonds when due as set forth in the form of the Policy included as an exhibit to this Official Statement.

The Policy is not covered by any insurance security or guaranty fund established under New York, California, Connecticut or Florida insurance law.

Build America Mutual Assurance Company.

BAM is a New York domiciled mutual insurance corporation and is licensed to conduct financial guaranty insurance business in all fifty states of the United States and the District of Columbia. BAM provides credit enhancement products solely to issuers in the U.S. public finance markets. BAM will only insure obligations of states, political subdivisions, integral parts of states or political subdivisions or entities otherwise eligible for the exclusion of income under section 115 of the U.S. Internal Revenue Code of 1986, as amended. No member of BAM is liable for the obligations of BAM.

The address of the principal executive offices of BAM is: 200 Liberty Street, 27th Floor, New York, New York 10281, its telephone number is: 212-235-2500, and its website is located at: www.buildamerica.com.

BAM is licensed and subject to regulation as a financial guaranty insurance corporation under the laws of the State of New York and in particular Articles 41 and 69 of the New York Insurance Law.

BAM’s financial strength is rated “AA/Stable” by S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC (“S&P”). An explanation of the significance of the rating and current reports may be obtained from S&P at www.standardandpoors.com. The rating of BAM should be evaluated independently. The rating reflects the S&P’s current assessment of the creditworthiness of BAM and its ability to pay claims on its policies of insurance. The above rating is not a recommendation to buy, sell or hold the Bonds, and such rating is subject to revision or withdrawal at any time by S&P, including withdrawal initiated at the request of BAM in its sole discretion. Any downward revision or withdrawal of the above rating may have an adverse effect on the market price of the Bonds. BAM only guarantees scheduled principal and scheduled interest payments payable by the issuer of the Bonds on the date(s) when such amounts were initially scheduled to become due and payable (subject to and in accordance with the terms of the Policy), and BAM does not guarantee the market price or liquidity of the Bonds, nor does it guarantee that the rating on the Bonds will not be revised or withdrawn.

Capitalization of BAM

BAM’s total admitted assets, total liabilities, and total capital and surplus, as of December 31, 2018 and as prepared in accordance with statutory accounting practices prescribed or permitted by the New York State Department of Financial Services were \$526 million, \$113 million and \$414 million, respectively.

BAM is party to a first loss reinsurance treaty that provides first loss protection up to a maximum of 15% of the par amount outstanding for each policy issued by BAM, subject to certain limitations and restrictions.

BAM's most recent Statutory Annual Statement, which has been filed with the New York State Insurance Department and posted on BAM's website at www.buildamerica.com, is incorporated herein by reference and may be obtained, without charge, upon request to BAM at its address provided above (Attention: Finance Department). Future financial statements will similarly be made available when published.

BAM makes no representation regarding the Bonds or the advisability of investing in the Bonds. In addition, BAM has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding BAM, supplied by BAM and presented under the heading "BOND INSURANCE".

Additional Information Available from BAM

Credit Insights Videos. For certain BAM-insured issues, BAM produces and posts a brief Credit Insights video that provides a discussion of the obligor and some of the key factors BAM's analysts and credit committee considered when approving the credit for insurance. The Credit Insights videos are easily accessible on BAM's website at buildamerica.com/creditinsights/. (The preceding website address is provided for convenience of reference only. Information available at such address is not incorporated herein by reference.)

Credit Profiles. Prior to the pricing of bonds that BAM has been selected to insure, BAM may prepare a pre-sale Credit Profile for those bonds. These pre-sale Credit Profiles provide information about the sector designation (e.g. general obligation, sales tax); a preliminary summary of financial information and key ratios; and demographic and economic data relevant to the obligor, if available. Subsequent to closing, for any offering that includes bonds insured by BAM, any pre-sale Credit Profile will be updated and superseded by a final Credit Profile to include information about the gross par insured by CUSIP, maturity and coupon. BAM pre-sale and final Credit Profiles are easily accessible on BAM's website at buildamerica.com/obligor/. BAM will produce a Credit Profile for all bonds insured by BAM, whether or not a pre-sale Credit Profile has been prepared for such bonds. (The preceding website address is provided for convenience of reference only. Information available at such address is not incorporated herein by reference.)

Disclaimers. The Credit Profiles and the Credit Insights videos and the information contained therein are not recommendations to purchase, hold or sell securities or to make any investment decisions. Credit-related and other analyses and statements in the Credit Profiles and the Credit Insights videos are statements of opinion as of the date expressed, and BAM assumes no responsibility to update the content of such material. The Credit Profiles and Credit Insight videos are prepared by BAM; they have not been reviewed or approved by the City or the Underwriters for the Bonds, and the City and Underwriters assume no responsibility for their content.

BAM receives compensation (an insurance premium) for the insurance that it is providing with respect to the Bonds. Neither BAM nor any affiliate of BAM has purchased, or committed to purchase, any of the Bonds, whether at the initial offering or otherwise.

THE CITY

General

The City of Artesia is located in southeastern New Mexico in Eddy County. The City was incorporated in 1905. The City is located approximately 240 miles south of Albuquerque. As of

February 2019, the estimated population of the City was approximately 12,411, which represented approximately 21.67% of the total population of Eddy County.

Mayor and City Council

The City operates under a Mayor-Council form of government. Eight councilors are elected from districts for four-year terms of office with terms staggered. Non-partisan elections are held bi-annually. The Mayor is elected at large for a four-year term and serves as the Chief Executive.

| <u>Name</u> | <u>Term Expires</u> |
|----------------------------|---------------------|
| Mayor Raye Miller | 2022 |
| Manuel Madrid, Jr. | 2020 |
| Raul Rodriguez | 2022 |
| George G. Mullen | 2022 |
| Luis Florez, Mayor Pro Tem | 2020 |
| Kent Bratcher | 2022 |
| Jeff Youtsey | 2020 |
| Terry Hill | 2022 |
| Bill Rogers | 2020 |

Administration

Aubrey Hobson, City Clerk/Treasurer. Mr. Hobson has worked in municipal government for approximately 41 years, 37 of which have been in city finance. He was previously employed at the City of Kermit, Texas and the City of Jal, New Mexico. Mr. Hobson is a Certified Municipal Clerk (CMC) and has acted as the Clerk/Treasurer for the City of Artesia for the last 14 years.

Other Employees

The City has approximately 200 employees, none of which are represented by a labor union. The City believes its relations with the employees are good. The City's police force consists of approximately 31 sworn officers. The City operates a library, museum, airport, senior citizens' center, fire station and sub-station, municipal water and sewer utility and solid waste facility. The City operates ball fields and playgrounds with paid staff members during a year round recreational program.

Retirement Plan; Other Post-Employment Benefits

Public Employees Retirement Association

The City participates in a pension plan organized on a statewide basis and operated by the State of New Mexico. The Public Employees' Retirement Association of New Mexico ("PERA"), established by Section 10-11-1 *et seq.* NMSA 1978, as amended, requires contributions to its plan (the "Plan"), computed as a percentage of salary, from both employee and employer for all full-time employees. The majority of State and municipal employees in New Mexico participate in the Plan. As required by State law, the City contributes to the plan amounts which vary from 9.5% to 21.6% of eligible employees' salaries. The City's contractual obligation under the Plan is limited to the periodic employer contributions that it is required to make for its participating employees. Statutorily required contributions to the plan made by the City for the last three fiscal years were \$507,561 in Fiscal Year 2018, \$602,900 in Fiscal Year 2017, and \$447,674 in Fiscal Year 2016.

On June 25, 2012, the Governmental Accounting Standards Board approved Statement No. 68 which requires governments providing defined benefit pensions to recognize their long-term obligation for pension benefits as a liability for the first time, and to more comprehensively and comparably measure the annual costs of pension benefits. Statement No. 68 requires governmental participants in cost-sharing multi-employer plans, such as the City, to record a liability and expense equal to their proportionate share of the collective net pension liability and expense for the cost-sharing plan. Statement No. 68 became effective for fiscal years beginning after June 15, 2014. The City’s proportionate share of PERA’s net pension liability was approximately \$14.2 million at June 30, 2018.

PERA issues a publicly available financial report that includes financial statements and additional information. A copy of this report can be obtained from PERA at www.nmpera.org/financial-overview.

Actuarial information is shown below:

**State of New Mexico Public Employees Retirement Fund
Summary Information as of June 30, 2018**

| | |
|--|------------------|
| Membership ⁽¹⁾ | 105,925 |
| Actuarial Information | |
| Actuarial Accrued Liability ⁽²⁾ | \$21,313,451,183 |
| Actuarial Value of Assets | \$15,252,860,672 |
| Unfunded Actuarial Accrued Liability | \$6,060,590,511 |

Source: PERA 2018 Comprehensive Annual Financial Statements

⁽¹⁾ Includes active, inactive and retired members from all divisions.

⁽²⁾ Includes accrued liability of both the retired and active members.

The State Legislature enacted comprehensive pension reform legislation during the 2013 legislative session. Senate Bill 27 significantly amended the Public Employees’ Retirement Act by creating a new tier of reduced benefits for new hires. The law reduced the cost of living adjustments for all current and future retirees; delayed the application of cost of living adjustments for certain future retirees; suspended the cost of living adjustments for certain return-to-work retirees; provided for an increase in the statutory employee contribution rate of 1.5% (subject to certain requirements) for employees earning \$20,000 or more in annual salary; provided for an increase in the statutory employer contribution of 0.4% beginning in fiscal year 2015; increased age and service requirements; lengthened the base average salary calculation amount from three to five years for future employees; increased the vesting period for employees from five to eight years for most members; lowered the annual service credit by 0.5% for most members; and made several other clarifying and technical changes.

In Fiscal Year 2018, PERA reported an audited Net Pension Liability (“NPL”) of \$6.1 billion, using methods and assumptions required under GASB Statement No. 67, the reporting standard applicable to pension plans. PERA annually prepares a “Schedule of Employer Allocations and Pension Amounts” that provides employer participants the information they need to comply with GASB Statement No. 68, including each employer’s proportionate share of the NPL. This schedule is audited by PERA’s independent auditors and is reviewed by the New Mexico Office of the State Auditor.

Retiree Health Care

The City does not participate in the State-sponsored New Mexico Retiree Health Care Fund, a cost-sharing multiple employer defined benefit postemployment healthcare plan administered by the Retiree Health Care Authority. The City does not provide retiree healthcare coverage to City employees.

Deferred Compensation Plan

The City offers its employees a deferred compensation plan created in accordance with Internal Revenue Code Section 457. The plan is administered by Diversified Retirement Corporation (DRC) and the assets and liabilities are held in trust by DRC. The plan is available to all City employees who work at least 17 hours a week. The plan permits participants to defer a portion of their salary until future years. The deferred compensation is not available to employees until termination, retirement, death or unforeseeable emergency.

All amounts of compensation deferred under the plan, all property and rights purchased with those amounts, and all income attributable to those amounts, property, or rights are (until paid or made available to the employee or other beneficiary) solely the property and rights of the City (without being restricted to the provisions of benefits under the plan), subject only to the claims of the City's general creditors. Participants' rights under the plan are equal to those of the deferred accounts of each participant.

The City contributes an amount equal to 8% for all employees contributing 0%, 9% for all employees contributing 2.5%, and 10% for all employees contributing 5% of the permanent, full-time employees' gross salaries. The City's contributions to the plan for the years ended June 30, 2018, 2017, and 2016 were approximately \$406,226, \$402,366, and \$405,233, respectively. As of January 1, 2002, the assets of the plan were placed in a trust to be held for the exclusive benefit of the participants and their beneficiaries.

Financial Statements and Budgets

Griego Professional Services, LLC, certified public accountants, audited the City's financial statements for the fiscal year ended June 30, 2018. Copies of the financial statements for the fiscal year ended June 30, 2018 and earlier years are available for review at City Hall, 511 West Texas Avenue, New Mexico 88210.

The City adheres to a two-part procedure in adopting its annual budget. The City Council submits the budget to the Local Government Division of the State Department of Finance and Administration prior to June 1 of each year. The operating budget includes proposed expenditures and the means of financing them. The Council holds public hearings to obtain public comments on the preliminary and final budget. Prior to July 31, the final budget is legally enacted through passage of a resolution after preliminary Local Government Division approval. The City is authorized to transfer budgeted amounts among departments within any fund, but must obtain approval of the Local Government Division prior to making revisions that alter the total expenditures of any fund. As a management control device, the City employs formal budgetary integration at the line item level.

Budget appropriations are allowed to carry over from one fiscal year to another. Deficit financing is not permitted under New Mexico law. The level of classification detail at which expenditures may not legally exceed appropriation for each budget item is the fund level (i.e., General, Water & Sewer, etc.).

Intergovernmental and Other Agreements

The City is party to certain agreements which impose obligations upon the City. There are no contracts or agreements in effect which potentially could have an effect on the security of the Bonds.

City Insurance Coverage

The City maintains insurance on its assets and operations as is customary and adequate, in its opinion, for similar entities insuring similar operations and assets. The City obtains both its general liability coverage and its errors and omissions liability coverage from New Mexico Self Insurers Fund. However, there can be no assurance that the City will continue to maintain the present level of coverage or that the present level of coverage will be adequate.

City Investment Policy

The City has not adopted a formal investment policy. Permitted investments are only the financial instruments allowed by Section 6-10-1 et seq., NMSA 1978. Reports reflecting the City's investments are submitted on a quarterly basis and are contemporaneous with the City's General Quarterly Report to the State Department of Finance and Administration.

AREA ECONOMIC INFORMATION

The following general information concerning the economic and demographic conditions in Eddy County and the surrounding area was obtained from the sources indicated, and the City makes no representation as to the accuracy or completeness of the data presented.

Federal Law Enforcement Training Center

The Federal Law Enforcement Training Center located in the City ("FLETC-Artesia") is a substantial contributor to the local economy. FLETC-Artesia is one of three Federal Law Enforcement Training Center residential sites in the United States and is situated on approximately 3,620 acres in the northwest section of the City.

FLETC-Artesia administers advanced and specialized training programs for the United States Border Patrol (USBP), the Bureau of Indian Affairs (BIA), the Transportation Security Administration (TSA) and other partnering organizations. Specialized instructor training programs such as the Driver Instructor Training Program, Firearms Instructor Training Program, the Law Enforcement Fitness Coordinator Training Program, and the Defensive Tactics Instructor Training Program are also conducted at FLETC-Artesia.

Approximately 1,200 employees from the USBP, the BIA, the TSA, FLETC and other contractors work at FLETC-Artesia. FLETC-Artesia has approximately 1,400 students which participate in training courses on a daily basis. FLETC-Artesia students stay in local hotels, rent housing within the City or live in one of the three FLETC-Artesia dormitories which house approximately 690 students.

Education

Approximately 3,850 students attend Artesia Public Schools, which includes one high-school, one junior high-school for 8th and 9th graders, one intermediate school for 6th and 7th graders, six elementary schools and one early child center for pre-kindergarten education.

NMSU-Carlsbad offers a variety of quality educational opportunities. The college is the Eddy County provider for Adult Basic Education Services (ABE). The college offers developmental studies designed to provide students with basic skills needed to achieve academic success. Certificate programs of 30-36 credit hours are designed to provide the students with marketable and employable skills upon completion. Associate of Arts degrees are designed for individuals who plan to complete their

educational goals with a baccalaureate degree. Associate of Applied Science degrees are designed for those who enter the work force upon graduation. Transfer programs are designed to provide freshman and sophomore level course work for students planning to transfer to institutions offering baccalaureate degrees. Non-credit programs offered through Community Services and Continuing Education programs provide a variety of educational, personal interest and enrichment programs for all ages.

Population and Age Distribution

The following chart sets forth historical population data and estimates for the City of Artesia, Eddy County and the State of New Mexico.

Population

| <u>U.S. Census</u> | <u>City of Artesia</u> | <u>Eddy County</u> | <u>State of New Mexico</u> |
|--------------------|------------------------|--------------------|----------------------------|
| 2019* | 12,411 | 57,273 | 2,091,198 |
| 2010 | 11,301 | 53,829 | 2,112,957 |
| 2000 | 10,650 | 51,658 | 1,821,078 |
| 1990 | 10,775 | 48,605 | 1,515,069 |
| 1980 | 10,385 | 47,855 | 1,303,143 |
| 1970 | 10,315 | 41,119 | 1,017,055 |
| 1960 | 12,000 | 50,783 | 951,023 |
| 1950 | 8,244 | 40,640 | 681,187 |
| 1940 | 4,071 | 24,311 | 531,818 |

Source: United States Census Bureau.

*Estimated (Source: Spotlight, February 2019).

Age Distribution

| <u>Age</u> | <u>City of Artesia</u> | <u>State of New Mexico</u> | <u>United States</u> |
|--------------|------------------------|----------------------------|----------------------|
| 0-17 | 28.66% | 23.25% | 22.49% |
| 18-24 | 9.43% | 9.65% | 9.56% |
| 25-34 | 14.21% | 13.21% | 13.48% |
| 35-44 | 12.92% | 11.99% | 12.61% |
| 45-54 | 11.13% | 11.51% | 12.69% |
| 55 and older | 23.65% | 30.39% | 29.17% |

Source: Spotlight, February 2019.

Income

The following table sets forth annual per capita personal income levels for the County, the State and the United States. The County's and the State's per capita income level over this period consistently has been lower than the national average.

Per Capita Personal Income

| Year | Eddy County | State of New Mexico | United States |
|------|-------------|---------------------|---------------|
| 2016 | \$48,077 | \$38,474 | \$49,246 |
| 2015 | 53,609 | 37,973 | 48,451 |
| 2014 | 51,720 | 36,770 | 46,494 |
| 2013 | 47,669 | 34,724 | 44,462 |
| 2012 | 50,676 | 35,410 | 44,267 |

Source: New Mexico Department of Workforce Solutions.

Effective Buying Income

The following table reflects the percentage of households by Effective Buying Income (“EBI”) and a comparison of estimated median household income. EBI is personal income less personal tax and non tax payments. Personal income includes wages and salaries, other labor income, proprietors’ income, rental income, dividends, personal interest income and transfer payments. Deductions are made for federal, state and local taxes, non-tax payments such as fines and penalties, and personal contributions for social security insurance. During the period shown in the following chart, the estimated median household income level for Eddy County compares favorably with the State but has consistently been lower than the national level.

Percent of Households by Effective Buying Income Groups - 2018

| Effective Buying Income Group | City of Artesia | State of New Mexico | United States |
|-----------------------------------|--------------------|------------------------|------------------|
| Under \$25,000 | 18.58% | 26.42% | 19.57% |
| \$25,000 - \$34,999 | 8.14% | 10.23% | 8.89% |
| \$35,000 - \$49,999 | 16.82% | 13.64% | 12.61% |
| \$50,000 - \$74,999 | 18.07% | 17.13% | 16.92% |
| Over \$75,000 | 38.39% | 32.58% | 42.01% |
| 2015 Est. Median Household Income | \$50,701 | \$45,633 | \$53,706 |
| 2016 Est. Median Household Income | \$49,516 | \$45,445 | \$55,551 |
| 2017 Est. Median Household Income | \$58,624 | \$47,043 | \$57,462 |
| 2018 Est. Median Household Income | \$62,265 | \$48,044 | \$60,133 |
| 2019 Est. Median Household Income | \$57,652 | \$49,654 | \$62,279 |

Source: Spotlight, February 2019.

Employment

The following table provides a five-year history of unemployment rates in the County, the State and the United States.

Labor Force and Percent Unemployed

| Year ⁽¹⁾ | Eddy County | | State of New Mexico | | United States |
|---------------------|-------------|--------------|---------------------|--------------|---------------|
| | Labor Force | % Unemployed | Labor Force | % Unemployed | % Unemployed |
| 2019 ⁽²⁾ | 32,689 | 3.2% | 960,717 | 4.8% | 3.7% |
| 2018 | 30,480 | 3.8% | 934,178 | 5.8% | 4.4% |
| 2017 | 28,871 | 5.3% | 929,567 | 6.2% | 4.4% |
| 2016 | 28,441 | 6.5% | 928,732 | 6.7% | 4.9% |
| 2015 | 29,685 | 4.9% | 927,999 | 6.5% | 5.3% |

Source: U.S. Bureau of Labor Statistics, February 2019.

⁽¹⁾ Numbers are annual averages.

⁽²⁾ Data for the month of January 2019. Numbers are preliminary.

Wage and Salary Employment in Eddy County

The following is a history of wage and salary employment for Eddy County as reported by the Bureau of Labor Statistics of the U.S. Department of Labor. Employment is classified according to the new North American Industry Classification System (NAICS).

| | ANNUAL AVERAGE | | | | |
|--|-----------------------|--------|--------|--------|--------|
| | 2014 | 2015 | 2016 | 2017 | 2018* |
| Total Private | 24,161 | 24,620 | 22,665 | 23,632 | 26,824 |
| Agriculture, Forestry, Fishing & Hunting | 400 | 353 | 385 | 387 | 396 |
| Mining | 7,275 | 7,088 | 5,553 | 6,033 | 7,595 |
| Utilities | 229 | 243 | 233 | 238 | 238 |
| Construction | 2,014 | 2,237 | 1,950 | 2,118 | 2,661 |
| Manufacturing | 883 | 954 | 907 | 924 | 999 |
| Wholesale Trade | 611 | 668 | 615 | 626 | 642 |
| Retail Trade | 2,659 | 2,772 | 2,759 | 2,716 | 2,871 |
| Transportation & Warehousing | 1,156 | 1,147 | 1,037 | 1,159 | 1,419 |
| Information | 239 | 228 | 204 | 202 | 217 |
| Finance & Insurance | 506 | 495 | 492 | 532 | 524 |
| Real Estate, Rental & Leasing | 499 | 483 | 393 | 407 | 500 |
| Professional & Technical Services | 526 | 656 | 641 | 692 | 1,026 |
| Management of Companies & Enterprises | 181 | 104 | 103 | 114 | 128 |
| Administrative & Waste Services | 1,217 | 1,238 | 1,336 | 1,373 | 1,352 |
| Educational Services | 237 | 227 | 242 | 233 | 169 |
| Health Care & Social Assistance | 2,565 | 2,688 | 2,757 | 2,723 | 2,777 |
| Arts, Entertainment & Recreation | 46 | 61 | 72 | 77 | 88 |
| Accommodation & Food Services | 2,269 | 2,305 | 2,350 | 2,408 | 2,476 |
| Other Services (excluding Public Administration) | 649 | 674 | 635 | 672 | 745 |
| Government | 3,667 | 3,732 | 3,823 | 3,777 | 3,440 |
| Federal | 606 | 624 | 677 | 686 | 694 |
| State | 538 | 517 | 477 | 460 | 436 |
| Local | 2,523 | 2,591 | 2,669 | 2,631 | 2,309 |
| TOTAL WAGE & SALARY EMPLOYMENT | 27,828 | 28,352 | 26,488 | 27,409 | 30,263 |

Source: New Mexico Department of Workforce Solutions, Quarterly Census of Employment and Wages.

* Average, Third Quarter 2018.

LITIGATION

At the time of the original delivery of the Bonds, the City will deliver a no-litigation certificate to the effect that no litigation or administrative action or proceeding is pending or, to the knowledge of the appropriate City officials, threatened, restraining or enjoining or seeking to restrain or enjoin, the issuance

and delivery of the Bonds, or contesting or questioning either the proceedings and authority under which the Bonds have been authorized and are to be issued, sold, executed or delivered, or the validity of the Bonds.

VERIFICATION OF CERTAIN MATHEMATICAL COMPUTATIONS

The mathematical accuracy of (i) the computations of the adequacy of the principal amounts and the interest thereon of the Defeasance Obligations and other funds to be deposited in the Escrow Fund, to provide for the payment, of the principal of, premium and interest on the Refunded Bonds when due or upon early redemption thereof, and (ii) the computations made supporting the conclusion that the yield on the Defeasance Obligations held pursuant to the Escrow Agreement is less than the yield on the Bonds for federal income tax purposes, will be verified by certified public accountants. Such verification will be based, in part, upon information supplied to the certified public accountant and consultant by the Financial Advisor.

LEGAL MATTERS

The City has engaged Modrall, Sperling, Roehl, Harris & Sisk, P.A., as Bond Counsel in connection with the issuance of the Bonds. Legal matters incident to the issuance of the Bonds and with regard to the tax-exempt status of the interest thereon (see "TAX MATTERS") are subject to the approving legal opinion of Bond Counsel, a form of which is attached hereto as Appendix A. A signed copy of the opinion, dated the date of the original delivery of the Bonds will be delivered at the time of the original delivery of the Bonds. Certain legal matters relating to the Bonds will also be passed upon for the City by its Disclosure Counsel, Modrall, Sperling, Roehl, Harris & Sisk, P.A. Certain legal matters will be passed upon for the Underwriters by McCall, Parkhurst & Horton L.L.P., Dallas, Texas. The opinions of Bond Counsel, Disclosure Counsel and counsel to the Underwriters will be dated and delivered on the date of initial delivery of the Bonds.

TAX MATTERS

General

In the opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, to be delivered at the time of original issuance of the Bonds, under existing laws, regulations rulings and judicial decisions, and assuming compliance with covenants described herein, interest on Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference under Section 57 of the Code (as defined below) for purposes of the federal alternative minimum tax imposed on individuals. Bond Counsel is also of the opinion, based on existing laws of the State of New Mexico as enacted and construed, that interest on the Bonds is exempt from all taxation by the State of New Mexico or any political subdivision thereof.

The Internal Revenue Code of 1986, as amended (the "Code"), imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal tax purposes of interest on obligations such as the Bonds. The City has made various representations and warranties with respect to, and has covenanted in the resolution authorizing issuance of the Bonds and other documents, instruments and certificates to comply with the applicable provisions of the Code to assure that interest on the Bonds will not become includible in gross income. Failure to comply with these covenants or the inaccuracy of these representations and warranties may result in interest on the Bonds being included in gross income from the date of issue of the Bonds. The opinion of Bond Counsel assumes compliance with the covenants and the accuracy of such representations and warranties.

Although Bond Counsel has rendered an opinion that interest on the Bonds is excludable from gross income for federal income tax purposes, the accrual or receipt of interest on the Bonds may otherwise affect the federal income tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient's particular tax status or other items of income or deduction. Bond Counsel expresses no opinion regarding any such consequences. Before purchasing any of the Bonds, potential purchasers should consult their tax advisors as to the tax consequences of purchasing or owning the Bonds.

The opinions expressed by Bond Counsel are based upon existing law as of the date of issuance and delivery of the Bonds, and Bond Counsel expresses no opinion as of any date subsequent thereto or with respect to any pending legislation.

From time to time, there are legislative proposals in Congress that, if enacted, could alter or amend the federal tax matters referred to above or adversely affect the market value of the Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted, it would apply to Bonds issued prior to enactment. Each purchaser of the Bonds should consult his or her own tax advisor regarding any pending or proposed federal tax legislation. Bond Counsel expresses no opinion regarding any pending or proposed federal tax legislation.

Internal Revenue Service Audit Program

The Internal Revenue Service (the "Service") has an ongoing program auditing tax-exempt obligations to determine whether, in the view of the Service, interest on such tax-exempt obligations is includable in the gross income of the owners thereof for federal income tax purposes. No assurances can be given as to whether the Service will commence an audit of the Bonds. If an audit is commenced, under current procedures the Service will treat the City as the taxpayer and the Bond owners may have no right to participate in such procedure. None of the Financial Advisor, the Underwriters or initial purchasers of the Bonds or Bond Counsel is obligated to defend the tax-exempt status of the Bonds. The City has covenanted in the Bond Ordinance not to take any action that would cause the interest on the Bonds to become includable in gross income except to the extent described above for the owners thereof for federal income tax purposes. None of the City, the Financial Advisor, the Underwriters or initial purchasers of the Bonds or Bond Counsel is responsible to pay or reimburse the costs of any Bond owner with respect to any audit or litigation relating to the Bonds.

Original Issue Discount

The Bonds may be offered at a discount ("original issue discount") equal generally to the difference between public offering price and principal amount. For federal income tax purposes, original issue discount on a bond accrues periodically over the term of the bond as interest. The amount of original issue discount deemed received by the holder is excludable from gross income of the holder for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. The accrual of original issue discount increases the holder's tax basis in the bond for determining taxable gain or loss from sale or from redemption prior to maturity. Holders of Bonds offered at an original issue discount should consult their tax advisors for an explanation of the accrual rules.

Original Issue Premium

The Bonds may be offered at a premium ("original issue premium") over their principal amount. For federal income tax purposes, original issue premium is amortizable periodically over the term of a bond through reductions in the holders' tax basis in the bond for determining taxable gain or loss from

sale or from redemption prior to maturity. Amortizable premium is accounted for as reducing the tax-exempt interest on the bond rather than creating a deductible expense or loss. Holders of Bonds offered at an original issue premium should consult their tax advisors for an explanation of the amortization rules.

CONTINUING DISCLOSURE

The City will enter into an undertaking (the “Undertaking”), a form of which is attached hereto as Appendix C, for the benefit of the holders of the Bonds to provide certain financial information and operating data and to provide notice of certain events, pursuant to the requirements of section (b)(5)(i) of Rule 15c2-12 of the United States Securities and Exchange Commission (17 C.F.R. § 240.15c2-12). A failure by the City to provide any information required thereunder shall not constitute an Event of Default under the Bond Ordinance.

The City has previously entered into continuing disclosure undertakings in accordance with Rule 15c2-12 with respect to its Gross Receipts Tax Revenue Bonds, Series 2009 (the “Series 2009 Bonds”), its Water and Wastewater System Revenue Bonds, Series 2010 (the “Series 2010 Bonds”), its Gross Receipts Tax Revenue Bonds, Series 2015 (the “Series 2015 Bonds”) and its Gross Receipts Tax Revenue Bonds, Series 2018 (the “Series 2018 Bonds”). The continuing disclosure undertakings entered into by the City with respect to the Series 2009 Bonds, the Series 2010 Bonds, the Series 2015 Bonds and the Series 2018 Bonds require the City to provide certain annual financial information and operating data by March 31 of each year, and to provide timely notice of certain enumerated events. The description of the continuing disclosure undertaking in the Official Statement for the Series 2010 Bonds indicated that “Annual Financial Information” included information of the type set forth under the headings “THE NET REVENUES,” “THE SYSTEM,” “INFORMATION CONCERNING THE MUNICIPAL GROSS RECEIPTS TAX AND REVENUES,” AND “HISTORICAL GENERAL FINANCIAL INFORMATION FOR THE CITY.” The continuing disclosure undertaking for the Series 2010 Bonds defines “Annual Financial Information” to include information of the type set forth under the headings “THE NET REVENUES” and “INFORMATION CONCERNING THE MUNICIPAL GROSS RECEIPTS TAX AND REVENUES.” For fiscal years ending June 30, 2015 and June 30, 2016, the City omitted wastewater rates from its filings of annual financial information and operating data. Except as indicated in this paragraph, the City has been in material compliance with the requirements of outstanding continuing disclosure agreements entered into in connection with bonds issued by the City over the past five years.

UNDERWRITING

Robert W. Baird & Co., Incorporated and Stifel, Nicolaus & Company, Incorporated (the “Underwriters”) have agreed to purchase the Bonds from the City pursuant to a Bond Purchase Agreement dated April __, 2019 (the “Bond Purchase Agreement”), at a price of \$_____ being the principal amount of the Bonds less an underwriting discount of \$_____[plus a net reoffering premium of \$_____]. The Bond Purchase Agreement provides that the Underwriters will purchase all of the Bonds if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the Bond Purchase Agreement, including the approval of certain legal matters by counsel and certain other conditions.

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

RATINGS

The Bonds have been assigned an underlying rating of “A+” (Negative Outlook) from S&P. Additionally, is expected that S&P will assign its municipal bond rating of “AA” to this issue of Bonds with the understanding that upon delivery of the Bonds, the Policy insuring the timely payment of the principal of and interest of the Bonds will be issued by the Bond Insurer. See “BOND INSURANCE” herein.

An explanation of the significance of such ratings may be obtained from S&P. Such ratings reflect only the views of S&P, and are not a recommendation to buy, sell or hold the Bonds and there is no assurance that the ratings will not be revised downward or withdrawn entirely by the rating agency, if, in such rating agency’s judgment, circumstances so warrant. Any downward revision or withdrawal of such ratings may have an effect on the market price or marketability of the Bonds.

CITY APPROVAL

This Official Statement and its distribution and use by the Underwriters have been authorized and approved by the City and has been executed and delivered by the Mayor on behalf of the City. As of the date hereof, to my knowledge and belief, this Official Statement is true, complete and correct in all material respects, and does not include any untrue statements of material facts or omit to state a material fact necessary in order to make the statements made herein, in light of the circumstances under which they were made, not misleading.

CITY OF ARTESIA, NEW MEXICO

By: _____
Mayor

APPENDIX A
Form of Legal Opinion

April __, 2019

City of Artesia
Artesia, New Mexico

\$ _____
City of Artesia, New Mexico
Water and Wastewater System Refunding Revenue Bonds, Series 2019

Ladies and Gentlemen:

We have acted as bond counsel to the City of Artesia, New Mexico (the “City”) in connection with the issuance and sale by the City of its \$ _____ City of Artesia, New Mexico Water and Wastewater System Refunding Revenue Bonds, Series 2019 (the “Bonds”). The Bonds are issued pursuant to the Constitution and laws of the State of New Mexico (the “State”), and Ordinance No. 1049 adopted by the Council on March 12, 2019, (the “Bond Ordinance”).

Except as expressly defined herein, capitalized terms used herein have the same meanings as such terms have in the Bond Ordinance.

We have examined the laws of the State and the United States of America relevant to the opinions herein, and other proceedings and documents relevant to the issuance by the City of the Bonds. As to the questions of fact material to our opinion, we have relied upon representations of the City contained in the certified proceedings and other certifications furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing, and subject to the assumptions and qualifications set forth below, we are of the opinion that, under existing law on the date of this opinion:

1. The Bonds are valid and binding special, limited obligations of the City under and in accordance with the Bond Ordinance.
2. The Bond Ordinance has been duly authorized, executed and delivered by the City and the provisions of the Bond Ordinance are valid and binding on the City.
3. The Bonds are payable as to principal and interest, solely from, and are secured by a pledge (but not an exclusive pledge) of Pledged Revenues, as more fully described in the Bond Ordinance. The owners of the Bonds have no right to have ad valorem property taxes levied by the City for the payment of principal and interest on the Bonds and the Bonds do not represent or constitute a debt or pledge of, or a charge against, the general credit of the City.
4. The Bond Ordinance creates the lien on the Pledged Revenues that it purports to create.
5. Under existing laws, regulations, rulings and judicial decisions, interest on the Bonds is excludable from gross income for federal income tax purposes. We are also of the opinion that interest on the Bonds is not an item of tax preference for purposes of calculating the alternative minimum tax imposed on individuals under provisions contained in the Internal Revenue Code of 1986, as amended (the “Code”). Although we are of the opinion that interest on the Bonds is excludable from gross income for federal income tax purposes, the accrual or receipt of interest on the Bonds may otherwise affect the

federal income tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient's particular tax status or other items of income or deduction. We express no opinion regarding any such consequences.

6. The Bonds and the income from the Bonds are exempt from all taxation by the State or any political subdivision of the State.

The opinions set forth in Paragraph 5 above are subject to continuing compliance by the City with covenants regarding federal tax law contained in the proceedings and other documents relevant to the issuance by the City of the Bonds. Failure to comply with these covenants may result in interest on the Bonds being included in gross income retroactive to their date of issuance.

The opinions expressed herein are based upon existing legislation as of the date of issuance and delivery of the Bonds, and we express no opinion as of any date subsequent thereto or with respect to any pending legislation. Our engagement with respect to the Bonds has concluded with their issuance. We disclaim any obligation to update this opinion.

The obligations of the City related to the Bonds are subject to the reasonable exercise in the future by the State and its governmental bodies of the police power inherent in the sovereignty of the State and to the exercise by the United States of the powers (including bankruptcy powers) delegated to it by the United States Constitution. The obligations of the City and the security provided therefor, as contained in the Bond Ordinance, may be subject to general principles of equity which permit the exercise of judicial discretion and are subject to the provisions of applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors rights generally, now or hereafter in effect.

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of result. We express no opinion with respect to any pending legislation.

We understand that Build America Mutual Assurance Company has issued a bond insurance policy relating to the Bonds. We express no opinion as to the validity or enforceability of such municipal bond insurance policy or the security afforded thereby.

We are passing upon only those matters set forth in this opinion and are not passing upon the accuracy or completeness of any statement made in connection with any sale of the Bonds or upon any tax consequences arising from the receipt or accrual of interest on, or the ownership of, the Bonds except those specifically addressed in Paragraphs 5 and 6 above.

Respectfully submitted,

APPENDIX B
AUDITED FINANCIAL STATEMENTS FOR
THE FISCAL YEAR ENDED JUNE 30, 2018

The City has not requested the consent of Griego Professional Services, LLC, which performed the audit of the City's Financial Statements, to the inclusion of the audit report and excerpts thereof in this Official Statement, and the auditor has not conducted a post-audit review of those Financial Statements.

APPENDIX C

FORM OF CONTINUING DISCLOSURE UNDERTAKING

CONTINUING DISCLOSURE UNDERTAKING

Section 1. Recitals. This Continuing Disclosure Undertaking (the “Undertaking”) is executed and delivered by the City Council of the City of Artesia, New Mexico (the “City”), in connection with the issuance of the City of Artesia, New Mexico Water and Wastewater System Refunding Revenue Bonds, Series 2019 (the “Bonds”). The Bonds are being issued pursuant to City Ordinance No. 1049 adopted by the City Council on March 12, 2019 (the “Bond Ordinance”). Pursuant to the Bond Ordinance, to allow the purchaser of the Bonds to comply with the Rule (defined below), the City is required to make certain continuing disclosure undertakings for the benefit of owners (including beneficial owners) of the Bonds (the “Owners”). This Undertaking is intended to satisfy the requirements of the Rule.

Section 2. Definitions.

(a) “Annual Financial Information” means the financial information (which will be based on financial statements prepared in accordance with generally accepted accounting principles, as in effect from time to time (“GAAP”), for governmental units as prescribed by the Governmental Accounting Standards Board (“GASB”)) and operating data with respect to the City, delivered at least annually pursuant to Sections 3(a) and 3(b) of this Undertaking, consisting of the information set forth in Tables 1 through 13 in the Official Statement.

(b) “Audited Financial Statements” means the City’s annual financial statements which financial statements have been audited as may then be required or permitted by the laws of the State.

(c) “EMMA” means the MSRB’s Electronic Municipal Market Access system located on its website at emma.msrb.org.

(d) “Event Information” means the information delivered pursuant to Section 3(d) of this Undertaking.

(e) “Financial Obligation” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided however that a “financial obligation” shall not include municipal securities as to which a final official statement (as defined in Rule 15c2-12) has been provided to the MSRB consistent with Rule 15c2-12.

(f) “MSRB” means the Municipal Securities Rulemaking Board. The current address of the MSRB is 1900 Duke Street, Suite 600, Alexandria, Virginia 22314, telephone (703) 797-6600, fax (703) 797-6708.

(g) “Official Statement” means the Official Statement dated April __, 2019, delivered in connection with the original issue and sale of the Bonds.

(h) “Report Date” means March 31 of each year, beginning in 2020.

(i) “Rule” means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended (17 C.F.R. Part 240, Section 240.15c2-12), as the same may be amended from time to time.

(j) “SEC” means the United States Securities and Exchange Commission.

(k) “State” means the State of New Mexico.

Section 3. Provision of Annual Financial Information and Reporting of Event Information.

(a) The City, or its designated agent, will provide the Annual Financial Information for the preceding fiscal year to EMMA on or before each Report Date while the Bonds are outstanding.

(b) If Audited Financial Statements are not provided as a part of the Annual Financial Information, the City will provide Audited Financial Statements to EMMA when and if available.

(c) The City, or its designated agent, may provide Annual Financial Information by specific reference to other documents, including information reports and official statements relating to other debt issues of the City, which have been submitted to EMMA or filed with the SEC; provided, however, that if the document so referenced is a “final official statement” within the meaning of the Rule, such final official statement must also be available from the MSRB.

(d) At any time the Bonds are outstanding and the City obtains knowledge of the occurrence of any of the following events with respect to the Bonds, the City shall file, in a timely manner not in excess of ten (10) business days after the occurrence of the event, a notice of such occurrence with EMMA:

(i) principal and interest payment delinquencies;

(ii) non-payment related defaults, if material;

(iii) unscheduled draws on debt service reserves reflecting financial difficulties;

(iv) unscheduled draws on credit enhancements reflecting financial difficulties;

(v) substitution of credit or liquidity providers, or their failure to perform;

(vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;

(vii) modifications to rights of Bondholders, if material;

- (viii) bond calls, if material, or tender offers;
 - (ix) defeasances;
 - (x) release, substitution or sale of property securing repayment of the Bonds, if material;
 - (xi) rating changes on the Bonds;
 - (xii) bankruptcy, insolvency, receivership or a similar event with respect to the City or an obligated person;
 - (xiii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
 - (xiv) appointment of a successor or additional trustee, or a change of name of a trustee, if material.
 - (xv) the incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
 - (xvi) a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.
 - (xv) the incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
 - (xvi) a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.
- (e) The City or its designated agent will provide, in a timely manner not in excess of ten (10) business days after the occurrence of the event, to EMMA, notice of any: (i) failure of the City to timely provide the Annual Financial Information as specified in Sections 3(a) and 3(b); (ii) changes in its fiscal year-end; and (iii) amendment of this Undertaking.

Section 4. Method of Transmission. Unless otherwise required by law and subject to technical and economic feasibility, the City, or its designated agent, will employ such methods of electronic or physical information transmission as is requested or recommended from time to time by EMMA, the MSRB and the SEC.

Section 5. Enforcement. The obligations of the City under this Undertaking are for the benefit of the Owners. Each Owner is authorized to take action to seek specific performance by court

order to compel the City to comply with its obligations under this Undertaking, which action will be the exclusive remedy available to it or any other Owner. The City's breach of its obligations under this Undertaking will not constitute an event of default under the Bond Ordinance and none of the rights and remedies provided by the Bond Ordinance will be available to the Owners with respect to such a breach.

Section 6. Term. The City's obligations under this Undertaking will be in effect from and after the issuance and delivery of the Bonds and will extend to the earliest of (i) the date all principal and interest on the Bonds has been paid or legally defeased pursuant to the terms of the Bond Ordinance; (ii) the date on which the City is no longer an "obligated person" with respect to the Bonds within the meaning of the Rule; or (iii) the date on which those portions of the Rule which require this Undertaking are determined to be invalid or unenforceable by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the Bonds.

Section 7. Amendments. The City may amend this Undertaking from time to time, without the consent of any Owner, upon the City's receipt of an opinion of independent counsel experienced in federal securities laws to the effect that such amendment:

(a) is made in connection with a change in circumstances that arises from a change in legal requirements, a change in law or a change in the identity, nature or status of the City;

(b) this Undertaking, as amended, would have complied with the Rule at the time of the initial issue and sale of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any changes in circumstances; and

(c) the amendment does not materially impair the interests of the Owners.

Any Annual Financial Information containing amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided. If an amendment changes the accounting principles to be followed in preparing financial statements, the Annual Financial Information and Audited Financial Statements for the year in which the change is made will present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 8. Beneficiaries. This Undertaking binds and inures to the sole benefit of the City and the Owners and creates no rights in any other person or entity.

Section 9. Requesting Information. Persons seeking to obtain the Annual Financial Information, including the Audited Financial Statements, may obtain such information by contacting the City Clerk/Treasurer at 511 West Texas Avenue, Artesia, New Mexico 88210.

Section 10. Special Funds. This Undertaking is subject to the availability of necessary funds from annual Pledged Revenues (as defined in the Bond Ordinance) and shall not constitute a general obligation of the City.

Section 11. Governing Law. This Undertaking is governed by and is to be construed in accordance with the law of the State.

Date: _____, 2019

CITY OF ARTESIA, NEW MEXICO

By: _____
Raye Miller, Mayor

APPENDIX D
SPECIMEN MUNICIPAL BOND INSURANCE POLICY



BAM

**MUNICIPAL BOND
INSURANCE POLICY**

ISSUER: [NAME OF ISSUER]

Policy No: _____

MEMBER: [NAME OF MEMBER]

BONDS: \$ _____ in aggregate principal
amount of [NAME OF TRANSACTION]
[and maturing on]

Effective Date: _____

Risk Premium: \$ _____

Member Surplus Contribution: \$ _____

Total Insurance Payment: \$ _____

BUILD AMERICA MUTUAL ASSURANCE COMPANY (“BAM”), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the “Trustee”) or paying agent (the “Paying Agent”) for the Bonds named above (as set forth in the documentation providing for the issuance and securing of the Bonds), for the benefit of the Owners or, at the election of BAM, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the first Business Day following the Business Day on which BAM shall have received Notice of Nonpayment, BAM will disburse (but without duplication in the case of duplicate claims for the same Nonpayment) to or for the benefit of each Owner of the Bonds, the face amount of principal of and interest on the Bonds that is then Due for Payment but is then unpaid by reason of Nonpayment by the Issuer, but only upon receipt by BAM, in a form reasonably satisfactory to it, of (a) evidence of the Owner’s right to receive payment of such principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner’s rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in BAM. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by BAM is incomplete, it shall be deemed not to have been received by BAM for purposes of the preceding sentence, and BAM shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, any of whom may submit an amended Notice of Nonpayment. Upon disbursement under this Policy in respect of a Bond and to the extent of such payment, BAM shall become the owner of such Bond, any appurtenant coupon to such Bond and right to receipt of payment of principal of or interest on such Bond and shall be fully subrogated to the rights of the Owner, including the Owner’s right to receive payments under such Bond. Payment by BAM either to the Trustee or Paying Agent for the benefit of the Owners, or directly to the Owners, on account of any Nonpayment shall discharge the obligation of BAM under this Policy with respect to said Nonpayment.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. “Business Day” means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer’s Fiscal Agent (as defined herein) are authorized or required by law or executive order to remain closed. “Due for Payment” means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless BAM shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration) and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. “Nonpayment” means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. “Nonpayment” shall also include, in respect of a Bond, any payment made to an Owner by or on behalf of the Issuer of principal or interest that is Due for Payment, which payment has been recovered from such Owner pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction. “Notice” means delivery to BAM of a notice of claim and certificate, by certified mail, email or telecopy as set forth on the attached Schedule or other acceptable electronic delivery, in a form satisfactory to BAM, from and signed by an Owner, the Trustee or the Paying Agent, which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount, (d) payment instructions and (e) the date such claimed amount becomes or became Due for Payment. “Owner” means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that “Owner” shall not include the Issuer, the Member or any other person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

BAM may appoint a fiscal agent (the “Insurer’s Fiscal Agent”) for purposes of this Policy by giving written notice to the Trustee, the Paying Agent, the Member and the Issuer specifying the name and notice address of the Insurer’s Fiscal Agent. From and after the date of receipt of such notice by the Trustee, the Paying Agent, the Member or the Issuer (a) copies of all notices required to be delivered to BAM pursuant to this Policy shall be simultaneously delivered to the Insurer’s Fiscal Agent and to BAM and shall not be deemed received until received by both and (b) all payments required to be made by BAM under this Policy may be made directly by BAM or by the Insurer’s Fiscal Agent on behalf of BAM. The Insurer’s Fiscal Agent is the agent of BAM only, and the Insurer’s Fiscal Agent shall in no event be liable to the Trustee, Paying Agent or any Owner for any act of the Insurer’s Fiscal Agent or any failure of BAM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, BAM agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to BAM to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy. This Policy may not be canceled or revoked.

This Policy sets forth in full the undertaking of BAM and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment, or provision being made for payment, of the Bonds prior to maturity. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW. THIS POLICY IS ISSUED WITHOUT CONTINGENT MUTUAL LIABILITY FOR ASSESSMENT.

In witness whereof, BUILD AMERICA MUTUAL ASSURANCE COMPANY has caused this Policy to be executed on its behalf by its Authorized Officer.

BUILD AMERICA MUTUAL ASSURANCE COMPANY

By: _____
Authorized Officer

SPECIMEN

Notices (Unless Otherwise Specified by BAM)

Email:

claims@buildamerica.com

Address:

200 Liberty Street, 27th floor

New York, New York 10281

Telecopy:

212-962-1524 (attention: Claims)

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